



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Judicial Review 55 of 2008**

WILSON KINUTHIA CHEGE.....APPLICANT

VERSUS

**NAKURU DISTRICT LAND DISPUTES TRIBUNAL.....1ST RESPONDENT
GRACE WATETU BORO.....2ND RESPONDENT**

RULING

Upon being granted leave, the applicant **Wilson Kinuthia Chege** has brought the present motion for certiorari to quash the decision of the Chief Magistrate to adopt the award of the Nakuru District Land Dispute Tribunal in Land Dispute No.2 of 2007.

The order is sought on the grounds that the Tribunal lacked jurisdiction to entertain the dispute and that the matters the Tribunal purported to adjudicate had been decided by a court of competent jurisdiction. The background to this matter is fairly straight forward and uncontroverted.

Daniel Boro Chege, a brother to the applicant committed suicide on 29th February, 1992. The 2nd respondent, Grace Watetu Boro filed H.C.SUCC. Cause No.70 of 1992 for a grant of letters of administration in respect of the estate of the deceased which comprised only NJORO/NJORO/1/110 KIKAPU. The applicant filed an objection which upon full hearing was upheld and the court(Rimita, J) found that the 2nd respondent was not a widow to the deceased but was a dependant. The court consequently made the following order:

“The petitioner will get 4 Acres from the estate and P.W.1, Wilson Kinuthia Chege the balance of 3 Acres. Temporary letter of administration will therefore issue to the Petitioner Grace Watetu Chege and P.W.1 Wilson Kinuthia Chege to be joint Administrators of the estate of the deceased.”

Subsequently a Certificate of Confirmation of a Grant was issued on 17th November, 1998 and a title deed issued to the applicant on 12th March, 2004 in terms of the above orders. The 2nd respondent appeared not to be satisfied with all these events and in 2007 made a reference to the Nakuru District Land Disputes Tribunal claiming the entire suit land. The Tribunal in its award stated the following in pertinent part-

“a) the plaintiff is a widow of late Mr. Daniel Boro Chege..... The plaintiff and her husband bought shares from the company and were allocated 3 Ha. of land. This land passed on to the plaintiff upon the demise of her husband, in accordance with Gikuyu Customs and the laws of the land.

b) The plaintiff went to the High Court, Nakuru and registered a succession cause No.70/92 with a view of obtaining legal authority of registering the land in her name.

c) At this time, the objector entered the fray with an eye on the land. He subsequently through chicanery was awarded by the court a portion of the land measuring 3 acres or 1.40hectares leaving the plaintiff with 1.60 hectares of land”

In the end the Tribunal found and ordered that:

“a) The plaintiff has proved her claim. The objector obtained her portion of land through chicanery, chauvinism and covetous motive.

b) The Tribunal orders the objector to return the title deed he obtained to the Nakuru District Registrar for cancellation.

c) The Registrar too should reinstate the plaintiff’s title deed, to own her entire land of approximately

3.000 hectares as it was on 16th April, 2003”

The applicant has maintained that the Tribunal had no jurisdiction to make the above award in view of its mandate as spelt out under **section 3** of the **Land Disputes Tribunal Act** and in view of the findings of the Probate Court, the award was *res judicata*. The 2nd respondent despite service did not respond to the application or appear when it was canvassed. The Attorney General entered appearance for the 1st respondent but filed no paper in response. I have considered the application, written submission and the authorities cited in support of the application.

An order of certiorari will issue to quash a decision of a tribunal or body subordinate to the High Court if that decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with.

The tribunal's jurisdiction is limited by virtue of **section 3** aforesaid to-

- a) decision of or determination of boundaries to land, including land held in common
- b) a claim to occupy land, and
- c) trespass to land

No doubt the Tribunal was aware that the dispute had gone to a probate court and the specific findings and orders made. Yet it went ahead to reverse those findings and orders thereby overturning the decision of the High Court. Its decision to cancel the applicant's title and its directive to the land registrar to restore the entire title to the 2nd respondent was without jurisdiction. The issues the Tribunal purported to resolve had been solved by a court superior to it and with competent jurisdiction. The matter was indeed *res judicata*. In addition the Tribunal had no jurisdiction to decide matters of succession.

In the result, the decision by the Tribunal in its entirety and the subsequent decree issued pursuant to that decision are quashed with costs to the applicant.

Dated, Signed and Delivered at Nakuru this 2nd day of June, 2010.

W. OUKO
JUDGE