



IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW CASE NO.61 OF 2009

PATRICK NJUGUNA WACHIRA.....APPLICANT

VERSUS

NORTH KINANGOP LAND

DISPUTE TRIBUNAL.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE,

NYAHURURU.....2ND RESPONDENT

THE LAND REGISTRAR,

NYANDARUA DISTRICT.....3RD RESPONDENT

EXPARTE

ZIPHORAH WANJIRU MAINA.....INTERESTED PARTY

RULING

Pursuant to leave granted on 5th June, 2009, the applicant has instituted these judicial review proceedings for the quashing by *certiorari* the decision of the 1st respondent, North Kinangop Land Dispute Tribunal made on 29th May, 2007 as well as the judgment and the decree of the Principal Magistrate's court entered on 23rd December, 2008. The applicant further seeks that the 2nd respondent, the Principal Magistrate's court, Nyahururu be prohibited by an order of prohibition from executing the judgment; that the 3rd respondent, the Land Registrar, Nyandarua District be similarly prohibited from registering any conveyance affecting title to parcel of land known as NYA/KITITI 2257 resulting from the decree in P.M. Land Dispute No.22 of 2008.

The motion and the hearing notice were duly served on the respondents and the interested parties who did not respond or attend during the hearing. The applicant contends that the Tribunal did not have jurisdiction to entertain the dispute; that its decision was in excess of its jurisdiction.

In its decision the Tribunal found and directed that:

- i) the suit land was transferred to the interested party's husband, Paul Maina Wachira who died before it was transferred to him
- ii) the interested party and her five daughters to file a succession cause to claim the suit land
- iii) the applicant and his co-claimant in the tribunal, Gladys Wangari Wachira to stop interfering with the interested party's interest on the suit land

- iv) the applicant and Gladys Wangari Wachira to withdraw restrictions on the suit land
- v) the Land Registrar, Nyandarua District to issue title deed to the interested party in accordance with Certificate of Confirmation issued in Succession Cause No.772 of 2007
- vi) the Executive Officer, Principal Magistrate's Court to sign necessary documents to facilitate the transaction

I need to point out only two matters. First, as the Tribunal heard the dispute, it was aware of the existence of High Court Succession Cause Nairobi No.772 of 2007. It has been submitted by counsel for the applicant that this cause is pending determination and involves the suit land which is registered in the name of the applicant's deceased father. By dint of **section 6** of the **Civil Procedure Act**, the Tribunal was prohibited from entertaining the dispute when the same issue was the subject in the succession cause. Secondly, **section 3(1)** of the **Land Disputes Tribunals Act** only empowers the Tribunal to hear disputes relating to:

- (i) trespass to the land
- (ii) determination of boundaries, and
- (iii) claim to work land

The Tribunal dealt with the issue of ownership based on probate matters and therefore clearly had no jurisdiction. The entry of judgment and issuance of a decree based on that decision was a nullity as a result.

The decision of the tribunal, the judgment and decree of the court below are hereby quashed by an order of certiorari. Similarly the Land Registrar, Nyandarua District is prohibited from acting on a decree issued in a flawed process.

In a nutshell, this application is allowed with costs.

Dated, Signed and Delivered at Nakuru this 30th day of July, 2010.

W. OUKO
JUDGE