



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Civil Application 30 of 2010**

REPUBLIC..... APPLICANT

VERSUS

**THE CHAIRMAN, LAND DISPUTES TRIBUNAL
KIRINYAGA CENTRAL DIVISION.....1ST RESPONDENT**

THE PRINCIPAL MAGISTRATE,

KERUGOYA.....2ND RESPONDENT

JOYCE WANGU GATHARA.....3RD RESPONDENT

EX PARTE

RULING

Pursuant to the order of leave given on 9th March 2010, Gathara Miano, the *Exparte* applicant herein, took out the Motion dated 10th March 2010 in which he applied for the following orders:

1. ***That an order for certiorari and prohibition do issue quashing decision of the Kirinyaga Central Division Land Disputes Tribunal dated 5th February, 2010 in Kirinyaga Central Land Disputes Tribunal Case Number 27 of 2009 and Kerugoya Principal Magistrate's Court dated 23rd February, 2010 in Kerugoya Principal Magistrate's Award Case Number 8 of 2010 in respect of L.R. NO. INOI/THAITA/605 and prohibiting Kerugoya Principal Magistrate's Court or any other subordinate Court from enforcing the judgment in terms of the said award in respect of L.R. NO. INOI/THAITA/605 and 606.***
2. ***That the costs of this application be provided for.***

The Motion is accompanied by a statement of facts and is verified by the affidavit sworn by the *Exparte* Applicant. When served with the Motion, **THE CHAIRMAN, LAND DISPUTES TRIBUNAL** and the **PRINCIPAL MAGISTRATE'S COURT, KERUGOYA** being the 1st and 2nd Respondents, through the Provincial Litigation Counsel, filed a Notice of Preliminary Objection while **JOYCE WANGU GATHARA**, the 3rd Respondent filed a replying affidavit she swore to oppose the Motion.

When the Motion came up for interpartes hearing, **Mr. Wamahiu**, learned advocate, held brief for Mr. Wahome, learned advocate for the *Exparte* Applicant, argued one main ground in support of the Motion. He pointed out that the Land Disputes Tribunal had no jurisdiction to hear a dispute relating to a trust and title to land.

Miss Munyi, learned Provincial Litigation Counsel, opposed the Motion on the ground that the Tribunal's decision was adopted as the order of the Court on 23rd February 2010, hence the Motion is overtaken by events as far as it relates to prohibition.

Mr. Maina, learned advocate for the 3rd respondent, opposed the Motion on the ground that the Respondent's complaint before the Tribunal was in respect of a claim to work on land since she was the *Exparte* Applicant's wife.

I have considered the rival submissions and the material placed before me. There is no dispute that Joyce Wangu Gathara filed a complaint before the Kirinyaga Central Division Land Disputes Tribunal claiming a portion of **L.R. NO. INOI/THAITA/605** and **L.R. NO. INOI/THAITA/606** as being held by Gathara Miano in trust for her. The Tribunal heard the dispute and by its decision of 5th February 2010, it awarded the 3rd Respondent 3 acres to be excised from **L.R. NO. INOI/THAITA/606**. The tribunal issued an order directing the *Exparte* Applicant to surrender the title deed for cancellation to enable the Land Registrar issue new titles for the consequent sub-divisions. It is obvious from the Tribunal's award that the tribunal's decision will lead to the sub-division of **L.R. NO. INOI/THAITA/606** into two portions. The consequence is that the aforesaid title and register will be closed upon sub-division. In essence, the *Exparte* Applicant will have to part with three (3) acres of his land to the 3rd Respondent. I have carefully perused the proceedings that were before the Land

Disputes Tribunal and it would appear the complaint before the tribunal was that relating to matrimonial property governed under the Married Women Property Act of 1882. The 3rd Respondent's claim appears to be based on contribution and trust. It is not therefore true that the complaint before the Land Disputes Tribunal was that relating to work on land. The submission of Mr. Maina therefore is displaced and cannot be true. Miss Munyi has pointed out that since the decision has been adopted then the order for prohibition does not lie. Miss Munyi's assertion is admitted in paragraph 8 of the verifying affidavit of Gathara Miano sworn on 6th March 2010. It is clearly conceded that the award was adopted on 23rd February 2010. However, a critical examination of the prayer sought will reveal that the *Exparte* Applicant is seeking for a prohibitory order to stop the Principal Magistrate's Court from enforcing the judgment. There is no evidence that the adoptive judgment has been executed. In the circumstances, I do not think Miss Munyi's objection can stand. I am satisfied that the order is available.

In the final analysis I am convinced the Land Disputes Tribunal acted without jurisdiction when it heard and determined a dispute relating to trust and title to land. Consequently the Motion dated 10th March 2010 is found to be with merit. It is allowed as prayed.

Dated and delivered at Nyeri this 23rd day of July 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Wairoma for 1st and 2nd Respondent and Mukuha holding brief for Chomba for 2nd Respondent and Wahome for applicant.