



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Judicial Review 89 of 2009

REPUBLIC.....APPLICANT
VERSUS
NAIVASHA LAND
DISPUTE TRIBUNAL.....1ST RESPONDENT
NAIVASHA CHIEF MAGISTRATE.....2ND RESPONDENT

AND

PENINA WAMBUI KARURI..... INTERESTED PARTY
EX PARTE

AFRICAN ORTHODOX CHURCH OF KENYA
(Suing through its Registered Trustees Rev. Fr. Nicholas Mokoma Gachigi, Rev. Fr. Peter Nganga Michara, Rev. Fr. Moses Ngugi & Fred Kago)

RULING

The substantive issue raised in this motion is whether the Naivasha Land Disputes Tribunal, 1st respondent, had jurisdiction to entertain the claim between the interested party and the applicant, the African Orthodox Church of Kenya (the church) in respect of parcel of land known as NAIVASHA/MARAIGUSHU BLOCK 11/614 (KARAI). There are also issues such as failure to hear the applicant and the question of whether the applicant has complied with the procedure in instituting this application. The respondents on their part have raised procedural issues.

But as I have stated, this application turns on the question of jurisdiction of the Tribunal. The interested party – Peninah Wambui Karuri testified before the tribunal saying the following:

“I am the registered owner of the plot in dispute. I purchased the land and plot No.NSA/MARAIGUSHU BLOCK 11/614 (KARAI) from Karai Farmers Co-operative Society and the same was allocated to me when the society was sub-dividing the land.

I was issued with the title deed on 27th February, 2001. I have not been visiting the land until the year 2005 when I met (sic) my plot fenced together with the church plot (Orthodox Church, Karai), Plot No.615.”

The in-charge of the church at Karai, Reverend Jacob Charles K. Kihiko also gave the position of the church stating:

“On the society’s farm we are members of the Karai Farmers Co-operative Society. We as the members of the African Orthodox Church, Karai bought the plots in dispute from the Society directors. The two plots were for Orthodox Church – 614 and 615.....”

The Tribunal, on the basis of the foregoing made the following award:

- “- The plaintiff to retain her title deed for the plot No.614 for the Tribunal has established that the plot is hers.**
- The African Orthodox Church to vacate from plot No.614.....”**

The contest, as I understand it from the foregoing, is that the church claims both 614 and 615 while the interested party claims 614. Can the

dispute be said to be related to:

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“.....division of or the determination of boundaries to land including land held in common or a claim to occupy or work land or trespass to land”

in terms of **section 3** of the **Land Dispute Tribunal Act**?

Section 3 aforesaid spells out the jurisdiction of the Tribunal as set out above. An order of *certiorari* is employed to quash a decision made by *quasi judicial* or a public body if the decision is made without or in excess of jurisdiction, or where the rules of natural justice are not complied with.

Where two parties contest the ownership or possession of land registered under the **Registered Land Act**, as is the case here, the dispute can only be entertained by the High Court, or where the value of the subject matter in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate. The Tribunal is empowered under **section 159** of the **Registered Land Act** to try disputes under the Act if such disputes come within **section 3(1)** of the **Land disputes Tribunals Act**.

No doubt this dispute relates to title to land and depending on the value of the suit land, it ought to have been filed either in the High Court or in the Resident Magistrate’s Court.

As a matter of fact, the church, through its trustees, instituted, in the Senior Principal Magistrate’s Court at Naivasha, SPMCC No.574 of 2008 against the interested party and Karai Farmers Co-Cooperative Society. Apart from the averment that the latter two have failed to enter appearance or file their defence, there is no indication

whether the matter has been determined or not. Suffice to say that that was the proper forum to entertain this dispute.

Having come to the conclusion that the Tribunal lacked jurisdiction in this matter, no purpose will be served in considering the second ground of this application – namely that the applicant was not given a hearing. That only leaves the question of procedure. Relying on the authority of **Republic Vs. The Minister of Lands and Settlement** *exparte Julius Kiboro Njongoo Mitungo*, H.C. Misc. Civil Application Nop.572 of 2004 and **Republic Vs. Defence Council of the Armed Forces & Another**, *exparte Benjamin Muema* H.C.Misc. C. Application No.1622 of 2004 counsel for the respondents submitted that the application offends **Order 53 rule 4** of the **Civil Procedure Rules** in that the reliefs sought in the statement of facts are different from those in the notice of motion. **Order 53 rule 4(1)** aforesaid provides that:

“4(1) Copies of the statement accompanying the application for leave shall be served with the notice of motion, and copies of any affidavits accompanying the application for leave shall be supplied on demand and no ground shall, subject as hereunder in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said motion.”
(Emphasis supplied)

I have looked at both the statement of facts and the motion as well as the submissions by the learned counsel for the applicants and find no merit in the contention by learned counsel for the respondents that **order 53 rule 4** aforesaid has been violated. The reliefs sought and the grounds relied upon in the application are the same ones argued before me.

For the reasons stated, this application succeeds and is accordingly allowed in terms of prayers 1 and 2 of the motion. There is averment and evidence that there is already a decree drawn following the entry of judgment by the Chief Magistrate’s court at Naivasha in C.M. Misc. Civil Application No.19 of 2009. That being so, an order of prohibition is not available.

There will be costs to the applicant to be borne by the interested party and the respondents.

Dated, Signed and Delivered at Nakuru this 8th day of July, 2010.

W. OUKO
JUDGE