

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Judicial Review 19 of 2009

LUCY WANDAI GICHOVI & ANOTHER.....APPLICANT

VERSUS

MURIUKI WANDAI.....RESPONDENT

R U L I N G

Leave to file a motion for orders of certiorari was granted on 1st December 2002, which is almost 8 years ago. There cannot be any justification for such a simple and straight forward matter to have dragged in court for that long. I note however that the matter was filed before the high Court in Nyeri, then transferred to Nairobi and then to this court where it was received on 22.06.09.

The Applicant is seeking orders of certiorari to remove into this court for the purpose of quashing the order made by Embu Land Disputes Tribunal made on the 23rd day of July 2002 to the effect that **Land Parcel No. NGANDORI/KIRIGI/3259** be cancelled from the Register and that the land be registered jointly in the names of **LUCY WANDIRI GICHOVI** and **MARY GICHOVI**.

The Applicant relies on one ground that the Tribunal lacked jurisdiction to make such an order. There is a replying affidavit dated 10.03.03 sworn by one Mary Gichovi. According to paragraph 10 of her replying affidavit, she says that the ex-parte Applicant ought to have filed an Appeal with the Provincial Land Disputes Committee instead of coming to this court. She therefore asks that the motion be struck out with costs. Nowhere in the said replying affidavit has she denied that the Tribunal acted ultra vires its jurisdiction in entertaining the matter.

I heard both counsel in their oral submissions in court. I have considered their submissions and all the material placed before me. I must agree with Mr. Kibugi for the Respondent that this motion was very badly drafted. It refers to plaintiffs and defendant. Under normal circumstances, I would have struck it out but given the duration it has stayed in court, such an act would in my view amount to a travesty of justice. I will therefore close my eyes to the lack of form and aspire to deal with issues of substantive justice. I have considered the relevant provisions of the law in respect of such matters. The law in this area is clearly spelt out. Under Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990, the Tribunal has jurisdiction to deal only with the following issues;

- (a) The division of, or determination of boundaries to land, including land held in common***
- (b) A claim to occupy or work land ; or***

(c) Trespass to land.

When you apply these provisions to the circumstances of this case, one does not need to go further than that to appreciate that the tribunal truly exceeded its jurisdiction. It purported to determine ownership of registered land. Such a jurisdiction is only vested in the courts by Section 159 of the Registered Land Act Cap 300 of the Laws of Kenya. Cancellation of Title Deeds is on the other hand also vested in the High Court pursuant to Section 143 of the Registered Land Act. By purporting to cancel the Title Deed in respect of the land parcel in question, the Tribunal acted in excess of its jurisdiction. Such excess calls for the quashing of the decision in question.

My finding therefore is that the Tribunal lacked Jurisdiction to determine the dispute in respect of the land in question. The orders it gave were therefore a nullity. The Respondents did certainly have a good claim but they should have ventilated it before a court with jurisdiction.

In the circumstances, this motion is allowed. The impugned decision is removed into this court and the same is hereby quashed. The parties herein are family and I therefore order that each party bears its own costs.

W. KARANJA
JUDGE

Delivered, dated and signed at Embu this 5th day of July 2010.

In presence of:- Mr. Utuku for Ex-parte Applicant and the interested parties in person.