

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Judicial Review 40 of 2009

REPUBLIC.....APPLICANT

VESUS

THE CHAIRMAN OF MWEA LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

SRM WANGURU COURT.....2ND RESPONDENT

ANN NJOKI.....3RD RESPONDENT

GATIMU NJERU KARIMI.....4TH RESPONDENT

RULING

With the leave of the court granted on 5.10.09, the ex-pate Applicant had moved this court for order

“That a prerogative order of certiorari do issue quashing the award of the Mwea Land Disputes Tribunal and the order of the Senior Resident Magistrate Court Wanguru adopting the award as judgment of the court made on 2.7.2009 canceling the exparte applicant’s title deed over Land Parcel No. KABARE/NYANGATI/4187 and ordering that it be issued jointly to the 3rd and 4th Rrespondents”.

He basically relies on one ground – that the land disputes Tribunal acted ultra vires Section 3(1) of the Land Disputes Tribunal Act.

I have considered the application and the rival affidavits herein. I have also perused the impugned award of the Land Disputes Tribunal.

After hearing the parties in the dispute, the Tribunal arrived at a decision which was more driven by humaneness than by the law. They made a finding that the 4th Respondent herein was a drunkard who had sold his land without informing his wife. They therefore ordered that the wife (since deceased) refunds the KShs.61,511 to the ex-parte applicant which had been paid as the purchase price. If I can start from here, that order was unlawful as the Tribunal has no jurisdiction to enforce contracts or order specific performance. This exceeded their jurisdiction as clearly stipulated under Section 3(1) of Land Disputes Tribunal Act. The Tribunal also “requested” the court to recommend the quashing of the ex-parte Applicant’s Title Deed and that the original title to the plot be issued in the joint names of the 4th Respondent and his late wife. These orders had nothing to do with division of, or determination of boundaries to land; a claim to occupy or work land; or trespass to land which are the only areas the Tribunal is mandated to cover.

The Tribunal did overtly exceed its jurisdiction and for that reason, its award cannot be allowed to stand. The Application dated 17.10.09 is therefore allowed. The Award of Mwea Land Disputes Tribunal and the subsequent order of the SRM Court Wanguru adopting the same as judgment of this court are removed into this court and the same are hereby quashed. I order that each party bears its own costs given the demise of the 3rd Respondent who was actually the claimant before the Tribunal.

W. KARANJA
JUDGE

Delivered, dated and signed at Embu this 27th day of September 2010.

In presence of:- Mr. Magee for Ms. Irungu for applicant.