



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Judicial Review 70 of 2009

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW BY DAVID JOHN MUNYAE

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL MAKUYU LAND CASE NO.48 OF 2008

BETWEEN

REPUBLICAPPLICANT

AND

- 1. THE CHAIRMAN LANDS DISPUTES)
- TRIBUNAL MAKUYU)
- 2. GITHIMA SETTLEMENT SCHEME)
- 3. JOSEPH MULI MUTISO)
- 4. FRANCIS WANJOHI MACHARIA)
- 5. JOSEPH MUTUNGA KIVUNZYA)
- 6. JOHN GICHUHI)
- 7. MICHAEL MUIRURI).....RESPONDENTS

AND

- 1. DAVIS NYAMU NJOKA)
- 2. LUKAS MUSEMBI THENGE)
- 3. STEPHEN WAMBUA MUSYOIA)
- 4. NYOLO KIILU)
- 5. MAVUNO HALISI LTD)
- 6. MATAMU HOLDINGS).....INTERESTED PARTIES

RULING

By a Notice of Motion under Order LIII Rule 3 of the Civil Procedure Rules the Ex parte Applicant moved the court for an order of certiorari to issue to remove to this court for purposes of being quashed the proceedings before Makuyu Land Disputes Tribunal case No.48 of 2008 and also an order of prohibition directed to the respondents to prohibit the conducting of other proceedings, issuing and or reading any award in the said case.

There is annexed to the Motion a verifying affidavit and a statement signed by the ex parte applicant. The basic complaint of the ex parte applicant is that he was never served with any statement of claim and only came to learn of this matter when he was served with a hearing notice.

There are also some complaints that the tribunal is bent on hearing the matter despite the fact that the same falls under the Registered Land Act and in particular ownership thereof.

Section 3(1) of the Land Disputes Tribunal Act No.18 of 1990 provides;

1. Subject to this Act all cases of civil nature involving a dispute as to;
 - a. **The division of, or the determination of the boundaries to land, including land held in common;**
 - b. **A claim to occupy or work land; or**
 - c. **Trespass to land, shall be heard and determined by a tribunal established under Section 4**

Section 3(2)(3)(4) of the Land Disputes Tribunal Act No.18 of 1990 provides as follows;

- (2). Every dispute referred to in subsection(1) shall be instituted by presenting a claim to the Tribunal for the area in which the land is situated, and shall contain, and contain only, a summary of the material facts on which the claimant intends to rely.**
- (3). Every claim shall be registered in register of claims to be kept by the Tribunal in the prescribed manner and the claims shall be numbered consecutively in each year according to the order of their institution.**
- (4). Every claim shall be served on the other party, or, where there are more than one or each of the other parties to the dispute and the provisions of Civil Procedure Act as regards service of summons shall thereafter apply.**

There is no evidence to show that the Ex parte Applicant herein was served with the statement of claim or that he was accorded adequate notice of the intended proceedings before the tribunal. Even without going to the other complaints that he has raised, it is a requirement of the rules of natural justice that a party knows the case that he is going to face.

It is not easy to conclude that the intended proceedings were going to touch on registered land because the material before me only refer to Githima Settlement Scheme and there is no title related thereto. There is also no evidence that the dispute presented before the Tribunal was within the provisions of Section 3(1) aforesaid or otherwise in which case, I would be in a position to address the issue of registered land.

That notwithstanding, the absence of notice alone and evidence of service upon the Ex parte Applicant was enough to vitiate the said proceedings. To that extent, the Ex parte Applicant succeeds in prohibiting the Tribunal from proceeding with the said hearing. That is not to say that the Tribunal shall not deliberate on the dispute.

I order that the statement of claim shall now be served upon the Ex Parte applicant who may then raise whatever objections that he has before the said Tribunal.

He shall however have the costs of this application.

Orders accordingly.

Dated, signed and delivered at Nairobi this 24th day of September, 2010.

A. MBOGHOLI MSAGHA

JUDGE