



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
JUDICIAL REVIEW NO. 42 OF 2009
IN THE MATTER OF THE LAND DISPUTE TRIBUNAL ACT NO. 18 OF 1990
IN THE MATTER OF THE LAND DISPUTE TRIBUNAL NO. 23 OF 2008
AND
IN THE MATTER OF AN APPLICATION BY JOSHUA GITIRIBA WANJOHI FOR ORDERS
OF CERTIORARI AND PROHIBITION

BETWEEN

REPUBLIC

VERSUS

THE BAHATI LAND DISPUTE TRIBUNAL.....RESPONDENT

AND

GRACE NJERI GITIRIBA.....INTERESTED PARTY/RESPONDENT
JOSHUA GITIRIBA WANJOHI.....SUBJECT/APPLICANT

RULING

The ex-parte Applicant Joshua Gitiriba Wanjohi (*the Applicant*), was granted leave to bring Judicial Review proceedings for orders of certiorari and prohibition against the decision of the Bahati Land Disputes Tribunal made on 9th May 2008, reinstating the Interested Party, Grace Njeri Gitiriba to the property known as KABAZI/MUNANDA/BLOCK 1/1114.

This Ruling concerns the substantive motion filed on 9th June 2009 but dated 8th June 2009. The motion has but one prayer -

"that an order of certiorari do issue to quash the decision of BAHATI LAND DISPUTES TRIBUNAL adopted by the Chief Magistrate's Court on 24th June, 2008."

The motion is founded upon the grounds in the Statement of Facts dated 7th May 2009 that the dispute before the Bahati Division Land Dispute Tribunal had been adjudicated upon and determined between the same parties Nakuru Chief Magistrate's Court Civil Case No. 334 of 1986, and Nakuru Chief Magistrate's Court Civil Case No. 721 of 1992.

The dispute concerns ownership of land, namely KABAZI MUNANDA/BLOCK 1/113 & 1114, which are registered in the name of the ex parte Applicant. The sole ground against the order of the Tribunal is that the Tribunal had no jurisdiction to determine issues of title. Mr. Gakinya who represented the ex parte Applicant cited to me the decisions of my brother Hon. Mr. Justice Sergon **REPUBLIC vs.**

NYERI DISTRICT LAND DISPUTES TRIBUNAL & 4 OTHERS [2005] eKLR to the effect that Land Disputes Tribunals have no jurisdiction to determine issues concerning ownership to land. That indeed is the law and the case. I would only add that only the High Court has exclusive jurisdiction under Section 159 of the Registered Land Act, (*Cap. 300, Laws of Kenya*) to determine issues of ownership to land.

I have read the eloquent Replying Affidavit of Grace Njeri Gatiriba, the Interested Party on how she labored to acquire the subject property only to see it "*registered under the name of the subject (ex parte Applicant) and his concubine maliciously.*"

This may or may not be so, but is not subject of inquiry in the motion the subject of this Ruling. The issue in the motion, and this Ruling is that the Land Disputes Tribunal overstepped its mandate under the law. Its jurisdiction is stated by Section 3(1) of the Land Disputes Tribunals Act, 1990 (No. 18 of 1990) to -

- (a) *The division of, or the determination of 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."*

The issue of who should or should not own the subject land is not one of the mandates given to the Land Disputes Tribunals to determine. That is one reason for allowing the application herein.

The other reason is that a party, like the Interested Party in this matter, who is dissatisfied with a decision of a lower court or this court, or tomorrow, the Court of Appeal, on a question of land, does not go on appeal or reference to a Land Disputes Tribunal. The Land Disputes Tribunals do not have such jurisdiction. A party who is dissatisfied with a decision of the lower court, appeals to the High Court, and from the High Court to the Court of Appeal, and tomorrow when the Supreme Court, a party who is unhappy with a decision of the Court of Appeal will have an opportunity to appeal to the Supreme Court. What an aggrieved party will not be allowed to do, is to commence the process again with the Land Disputes Tribunals. They have no such jurisdiction.

For those reasons there shall issue an order of certiorari to remove to this court and to quash the decision of the Bahati Division Land Disputes Tribunal made on 9th May 2008.

Having reached this conclusion, I should end this ruling here. I am however concerned with apparent lack of distinction by counsel generally on an affidavit verifying the correctness of the averments contained in a plaint (*Order 7 rule 2(2) of the Civil Procedure rules*), and an Affidavit Verifying the Facts required by Order LIII rule 1(2) of the Civil Procedure Rules.

I wish to emphasise as it was determined in the case **Commissioner-General (Kenya Revenue Authority) vs. Silvano Okema Owaki t/a Marenga Filling Station, Civil Appeal No. 45 of 2000**, that it is the *Affidavit Verifying the Facts*, and not the *Statement of Facts* which is of evidential value in judicial review proceedings. It is not a verifying affidavit as envisaged under Order 7 rule 2(2) aforesaid.

Save as aforesaid, I reiterate the order of certiorari, against the decision of the Bahati Land Disputes Tribunal, and its purported adoption on 28th June 2008.

Lastly these being family disputes, I direct each party to bear its own costs.

Dated, signed and delivered at Nakuru this 29th day of October 2010

M. J. ANYARA EMUKULE
JUDGE