



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

MISCELLANEOUS CIVIL APPLICATION NO. 254 OF 2009

REPUBLIC.....

....APPLICANT

VERSUS

THE CHAIRMAN, NYERI MUNICIPALITY LAND DISPUTES
 TRIBUNAL.....1ST RESPONDENT

THE CHIEF MAGISTRATE’S

COURT.....2ND RESPONDENT

CHARLES MUNENE

M’TIRITHIA.....INTERESTED PARTY

AND

JAMES EDMUND NDOHHO WAHORO.....Ex-

Parte APPLICANT

JUDGMENT

James Edmund Ndohho Wahoro, the exparte applicant herein, took out the Motion dated 10th August 2009 in which he prayed for the following orders:

1. ***“THAT an order of Certiorari do issue to remove to the High court and be quashed the proceedings and award of the Nyeri Municipality Land disputes Tribunal dated 28th April 2009 Tribunal in Tribunal Case No. 9 of 2007 between the subject/applicant and the interested party and the proceedings, judgment and decree of the Nyeri Chief Magistrate’s court in Land Case No. 92 of 2009.*”**
2. ***THAT the cost of this application be awarded to the subject/applicant.*”**

The Motion is accompanied by a statement of facts and is verified by the affidavit of the Applicant sworn on 28th July 2009. **Charles Munene M’tirithia**, the Interested Party, filed a replying affidavit to oppose the Motion. When the Motion came up for hearing, learned counsels appearing from both sides recorded a consent order in which they agreed to file written submissions to dispose of the Motion.

I have considered the material placed before this court plus the written submissions. The genesis of this case appear to be brief and straightforward. The interested party herein filed a complaint before the Nyeri Municipality Land Dispute Tribunal claiming to have bought the parcel of land known as **L.R. NO. THEGENGE/KARIA/2868** for Ksh.250,000/= from the Exparte applicant. The aforesaid tribunal heard

the complaint and ruled the case in favour of the Interested Party. The Tribunal formed the opinion that the Interested Party had bought the land from the Exparte Applicant. It ordered the Applicant to transfer the land to Interested party. In fact it authorized the Executive Officer to sign the necessary documents in place of the Applicant. The Exparte Applicant is now before this court seeking to have the aforesaid decision to be quashed by an order of certiorari on the ground that the tribunal had no jurisdiction to hear and determine the dispute. The Respondent opposed the Motion on the basis that the tribunal's decision having been adopted as the judgment of the Chief Magistrate's Court, the respondents became *functus officio* hence the decision cannot be re-opened. It is the respondents' view that the Applicant should have sought for an order prohibiting the 2nd Respondent from adopting the tribunal's decision. The Respondents were of the view that they did not exceed their mandate when making their decisions. The Interested Party adopted the submissions of the respondents and also took the view expressed by them.

Having considered the rival submissions, it is clear that there is no doubt that the Land Disputes Tribunal decided a dispute based on contract. The Interested Party alleged he bought the parcel of land known as **L.R. NO. THEGENGE/KARIA/2868** from the Applicant for Ksh.250,000/=. The tribunal agreed with him and gave judgment in his favour. In fact the tribunal gave a specific order directing the applicant to transfer the land to the Interested Party. The question is whether the Land Disputes Tribunal had jurisdiction to hear and determine the dispute? The answer to the above question can easily be answered by looking at *Section 3* of the Land Disputes Tribunals Act No. 18 of 1990 which provides as follows:

3.(1) Subject to this Act, all cases of a civil nature involving dispute as 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.

(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, on each of the other parties to the dispute and the provisions of the Civil Procedure Act as regards service of summonses shall thereafter apply.

(5) each party upon whom a claim is served shall, unless the claim is admitted, within thirty days after service, file with the Tribunal an answer containing a reply to the matters stated in the claim and a summary of the facts upon which he wishes to rely.

(6) Within thirty days after the answer has been filed under subsection (5) the claim shall be set down for hearing by the Tribunal.

(7) the Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognized customary law, after hearing the parties to the dispute, any witness or witnesses whom they wish to call and their submissions, if any, and each party shall be afforded an opportunity to question the other party's witness or witnesses.

(8) The Tribunal shall give reasons for its decision, which shall contain a summary of the issues and the determination thereof, and which shall be dated and signed by each member of the Tribunal.

(9) Notwithstanding any other written law no magistrate's court shall have or exercise jurisdiction or powers in cases involving any issues set out in paragraphs (a) to (c) of subsection (1).

(10) In adjudicating upon claims instituted under this section the Tribunal may be assisted by the Registrar."

It is apparent from the above section that the tribunal's mandate is limited. The tribunal was not expressly allowed by the aforesaid section to hear and determine Land disputes based on contract nor a claim of ownership. The Nyeri Land Disputes Tribunal therefore acted without jurisdiction when it purported to determine a dispute based on contract and to further determine ownership to land. The decision therefore was a nullity hence there was no competent decision to be adopted for purposes of implementation by the Chief Magistrate's Court.

In the end I find the Motion dated 10th August 2009 to be meritorious. It is allowed with costs to the Applicant.

Dated and delivered at Nyeri this 19th day of November 2010.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Kimunya for Applicant. Kingori holding brief for Munyi for respondent. Kiminda holding brief Muhoho for Interested Party.