



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAIROBI

ELC JR. MISC APPLICATION NO.63 OF 2009

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION BY
PETER KIMANI KARUIKI

AND

IN THE MATTER OF THE AWARD ENTERED IN THIKA LAND DISPUTE TRIBUNAL NO.60
OF/005/2008

AND

IN THE MATTER OF THE CHIEF MAGISTRATE COURT AT THIKA D.O CASE NO.66 OF 2008

BETWEEN

REPUBLIC

VERSUS-

THE CHAIRMAN THIKA LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

CHIEF MAGISTRATE THIKA LAW COURTS.....2ND RESPONDENT

AND

GEORGE KARIUKI REBO.....INTERESTED PARTY

EX-PARTE

PETER KIMANI KARIUKI

RULING

Before me, is a Notice of Motion dated 10th July, 2009 brought by the *ex-parte* applicant that this court gives an order of certiorari to quash the proceedings and decree dated 19th February, 2009 in respect of land dispute at the District Officer's office in case No.66 of 2008. The other order sought is for prohibition to prohibit the respondents from taking any proceeding and or making any order similar to and or same manner as the award and order the subject of review herein.

The Notice of Motion followed a grant of leave to file an application for Judicial Review orders made on 24th June, 2009. At the centre of this dispute is a parcel of land known as title No.Kiambu/Munyu/522. The said property is registered in the name of one Kangochi Njenga who is said to be deceased. The said Kangochi Njenga is the father of one Kariuki Kimani who is said to be also deceased. The said late Kariuki Kimani is the father of the *ex-parte* applicant herein Peter Kimani Kariuki.

The background of this dispute is that the late Kariuki Kimani sold this parcel of land to the interested party George Kariuki Rebo. The interested party then moved to the Land Disputes Tribunal vide Tribunal Case No.60/005 of 2008 on the strength of an agreement executed between, him that is, the interested party, and one Kariuki Kimani aforesaid. His case before the Tribunal was that he purchased this parcel of land at the price of Ksh.472,000/= and paid a sum of Kshs.378,800/= leaving a balance of Kshs.93,200/=. Following the said agreement, he moved onto the said land and put up a house. The late Kariuki Kimani passed away before he could transfer the land to the purchaser's name. Thereafter the *ex-parte* applicant herein came for the balance of the money but this could not be paid without the transfer of the land in favour of the interested party. It was the case of the interested party before the Tribunal that, the *ex-parte* applicant and his mother demanded more money for the parcel of land and this necessitated the filing of the case before the Land Disputes Tribunal.

After the hearing, the Tribunal concluded that the land belonged to the interested party George Kariuki Rebo and that he should process the succession cause and the land be transferred to him immediately. The balance of the purchase price was to be paid on transfer of the land. Subsequently, this award was adopted as the judgment of the court and a decree drawn to that effect. What followed are the proceedings now before this court.

As observed above, the property was, and is still, in the name of Kagochi Njenga. His son Kariuki Kimani was not the administrator of the estate of his late father and could not therefore enter into any Sale Agreement in respect of that estate. The Sale Agreement between the interested party and Kariuki Kimani was void *ab initio* because Kariuki Kimani did not have Letters of Administration and therefore lacked the *locus standi* to commit any property belonging to the estate of his late father Kagochi Njenga.

The *ex-parte* applicant Peter Kimani Kariuki was not the Administrator or Legal Representative of the estate of either his grandfather Kagochi Njenga or his father Kariuki Kimani and therefore, could not be sued in any capacity relating to the said parcel of land. Additionally, the Tribunal exceeded its mandate in that Section 3(1) of Land Disputes Tribunal Act No.18 of 1990 provides the jurisdiction of any Tribunal dealing with land. It provides that the tribunal has powers to deal with;

- a) **The determination of boundaries to land including land held in common.**
- b) **Claim to occupy or work on land or;**
- c) **Trespass.**

The disputes referred to the Thika Land Disputes Tribunal related to ownership to land as well as title to land based on a Sale Agreement. It is clear from the facts and evidence adduced that, the land belonged to a deceased person and that it was registered under the Registered Land Act Cap 300, Laws of Kenya. The issues of succession were also advanced in the hearing and it is clear from the law that a Tribunal has no jurisdiction whatsoever to deal with matters of succession.

From the forgoing, the Tribunal exceeded its mandate because of the observations I have made herein above. From the evidence on record it is clear that there was an agreement for sale executed between Kariuki Kimani and the interested party herein. It is not in dispute that the interested party paid some money in compliance with the said agreement. There is also evidence that he took possession and developed the land.

That notwithstanding, the law in this regard is against him and therefore the application by *ex-parte* applicant must succeed. I give orders as prayed in the Notice of Motion dated 10th July, 2009. There are two options available to the parties herein; the first is, the parties may elect to settle the dispute by allowing the interested party to complete the payment in accordance with the Sale agreement and on confirmation that the *ex-parte* applicant is the Legal Representative of the estate of his grandfather Kagochi Njenga. The second alternative is that, the *ex-parte* applicant may offer to refund the interested

party the money paid in execution of the Agreement for Sale. The *ex-parte* applicant shall have the costs of the application.

Orders accordingly.

Dated, signed and delivered at Nairobi this 2nd day of November, 2010.

A. MBOGHOLI MSAGHA

JUDGE