



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Appli 1282 of 2002**

**REPUBLIC.....APPLICANT**  
**- VERSUS -**  
**GATUNDU LAND DISPUTE TRIBUNAL**  
**AMOS MWANGI NGOORO**  
**SENIOR RESIDENT MAGISTRATE GATUNDU.....RESPONDENTS**  
**NDUATI MURIMU.....INTERESTED PARTY**  
**JUDGMENT**

Before me is the Amended Notice of Motion dated 7<sup>th</sup> February 2003 and amended on 14<sup>th</sup> April 2003 brought by Nduati Murimu against the Gatundu Land Disputes Tribunal, Amos Mwangi Ngooro and the Senior Resident Magistrate Gatundu for an order of certiorari to issue to remove into this court and quash the orders of the Land Dispute Tribunal No.136/01 and order of the Resident Magistrate at Gatundu in case No. 5/02. The application is supported by the verifying affidavit of Nduati Murimu dated 15<sup>th</sup> October 2002 and the statement dated 15<sup>th</sup> October 2002 and there is another affidavit filed with the amended Notice of Motion on 6<sup>th</sup> May 2003. The Applicant has described himself as the Interested Party but should be the exparte Applicant.

The Motion was opposed by all the Respondents. The 2<sup>nd</sup> Respondent, Amos Mwangi swore an affidavit on 19<sup>th</sup> November 2007 titled further affidavit while Mr. Atanda filed a notice of preliminary objection on behalf of the 1<sup>st</sup> and 3<sup>rd</sup> Respondents dated 3<sup>rd</sup> March 2008.

The applicants case is that he is the registered owner of Land Parcel Ndarugu/Karatu/T 10 and Amos Mwangi Ngooro filed DO case 136/01 at the Gatundu Lands Disputes Tribunal against the Applicant claiming the transfer of the land to him and the Tribunal did order a transfer of the land to the said Amos Mwangi. The award was adopted by the Senior Resident Magistrate's Court Gatundu in D.O. Case No. 5/02; the Applicant is challenging the decision of the Tribunal on the basis that the Tribunal did not have the jurisdiction to order transfer of titled land. The Applicant exhibited a copy of official search No. 62/10/03 dated 2<sup>nd</sup> October 2002 which shows the proprietor to be Nduati son of Murimu.

The Respondents opposed the Motion on the grounds that the application is defective an abuse of the court process and does not comply with Order 53 Civil Procedure Rules, is incompetent and misconceived. In his affidavit, the 2<sup>nd</sup> Respondent deposed that the suit property has already been transferred into his name and he annexed the title deed as AMN F1 and that he was never served with an order of stay. Mr. Atanda also submitted that the applicant never sought the Courts leave to amend the Notice of Motion and that in any case, Order 53 Civil Procedure Rules only allows amendment of the statement. He also urged that the Applicant should have appealed instead of filing this application.

In this application the exparte Applicant refers to himself as an Interested Party. In Judicial Review, the one who brings the application is an ex parte Applicant whereas the public body against whom Judicial Review Orders are sought is the Respondent. A private individual like Amos Mwangi cannot be a Respondent because the decision challenged cannot be made by an individual this being a public law remedy. Amos Mwangi should have been the Interested Party. That is just an observation which Counsel should note but I will not find the motion to be defective on that basis.

What is before the court for consideration is the Amended Notice of Motion dated 7<sup>th</sup> February 2003. Though Ms. Wanjeri who urged the motion on behalf of the Applicant had no idea when it was amended, I have perused the court record and noted that on 26<sup>th</sup> March 2003 Justice Rawal allowed the amendment of the Notice of Motion. It is true that Order 53 civil Procedure Rules does not provide for amendment of Notice of the Motion but courts have exercised their

inherent powers under Order 53 Civil Procedure Rules and allowed amendment of the Notice of Motion for good reason and to do justice to the parties. The amended Notice of Motion is properly on record.

Mr. Atanda also contended that the impugned decision was never exhibited. However on 7<sup>th</sup> July 2003 the Applicant's Counsel sought leave to file a further affidavit and did file an affidavit titled '*supporting affidavit*' dated 15<sup>th</sup> July 2003 to which he exhibited as NM1 the proceedings before the Land Tribunal. The Tribunal found that they were satisfied from the evidence that Amos Mwangi was given the disputed land by his deceased uncle Mwangi Murimu and they ordered the transfer of the land to Amos Mwangi Ngooro. The Applicant did not however exhibit the proceedings before the Senior Resident Magistrate's Court Gatundu. However the Respondent is even aware that the court adopted the award and a decree was executed resulting in the issuance of a title to Amos Mwangi. Failure to exhibit the court's decision is therefore not fatal to the application.

The question is, did the Tribunal have the jurisdiction to make such an award? The powers of the Tribunal are contained in Section 3 (1) of the Land Disputes Tribunal Act which include determination of disputes relating to trespass to land, working of land and boundaries. In the instant case the tribunal purported to pass title to another and infact the Interested Party claims to have obtained title. The decision of the Tribunal is made in excess of its jurisdiction under the Act and is therefore ultra vires the Act and hence null and void. Since the decision is a nullity, no title could have passed to Amos Mwangi Ngooro and all that has been done is a nullity including the title that was issued. The Tribunal arrogated to itself powers of the High Court under S.159 of the Registered Land Act or a subordinate court that could adjudicate on land with a value of ?25,000. In the case of **JOTHAM AMUNAVI V THE CHAIRMAN SABATIA LAND DISPUTES TRIBUNAL CA 253/1999** the Court of Appeal held that the Tribunal had no jurisdiction to adjudicate on matters of title to land under the Registered Land Act nor did it have jurisdiction in matters of beneficial interest to land as it purported to posses in this case. It is the preserve of the High Court or a subordinate with jurisdiction under Section 159 Registered Land Act.

The Applicants' title was registered under the Registered Land Act and the Tribunal has no powers to interfere with it and hence acted ultra its powers. The magistrate's powers are limited to accepting the award of the Land Disputes Tribunal and adopting it as an order of the court without necessarily looking at the merits of the decision. So the award forwarded to the court which then adopted it and proceeded to grant a decree was all a nullity. What is a nullity cannot be validated by issuance of a title. The decision being a nullity abinitio, there was nothing for the Applicant to appeal against. The best remedy was Judicial Review to quash that decision. In the result, the title issued to the 2<sup>nd</sup> Respondent and the decision of the Senior Resident Magistrate Court Gatundu and Land Disputes Tribunal must be brought up for quashing and they are hereby quashed by an order of certiorari. The costs of the motion to be borne by the 1<sup>st</sup> Respondent.

**Dated and delivered this 10<sup>th</sup> day of March 2009.**

**R.P.V. WENDOH**

**JUDGE**