



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MACHAKOS

Civil Misc. Appl. 109 of 2008

REPUBLIC
.....APPLICANT

VERSUS

1. LAND DISPUTES TRIBUNAL KITUI DISTRICT

2. SENIOR RESIDENT MAGISTRATE KITUI LAW COURTS
RESPONDENTS

AND

GEOFFREY MUSYOKA NGOTHOINTERESTED
PARTY

JACKSON MUSYOKI KATITUEXPARTE
APPLICANT

RULING

1. The Dispute before the Kitui District Land Disputes Tribunal in its case Number 114/2006 was whether Geoffrey Musyoka Ngotho was entitled to possession and ownership of plot number Mutongoni/Mithini 618 and 619 which were on 30.1.1980 both registered in the names of Mrs Syovinya Katitu.

2. The Tribunal decided as follows:-

“The panel has considered the facts in the case and decided to award the Plot Nos 618 and 619 to Geoffrey Musyoka Ngotho” and in the Notice of Motion dated 18.6.2008, the ex-parte Applicant seeks the following orders under Order LIII Rule 3(1) of the Civil Procedure Rules;

i. *“That the judicial review order of certiorari be issued to move into this court for purposes of quashing the proceedings and decisions of the Kitui Land Disputes Tribunal in Land Case Nos 618 and 619 of 2006 read in court on 6th February 2008.*

ii. *That an order of prohibition, prohibiting the Senior Resident Magistrate’s Court at Kitui from enforcing the decision of the Kitui Land Dispute Tribunal Land Case No. 618 and 619 read on 7th February, 2008 at the Resident Magistrate’s Court at Kitui Civil Case No. 114/2006.*

iii. *That such further or other directions or orders this Honourable Court may deem fit, for the ends of justice be granted.*

iv. *That the costs of these proceedings be provided for.*”

3. The grounds in support are that;

a. *“That the Land Disputes Tribunal had no jurisdiction to entertain any disputes relating to parcel No. Mutonguni/Mithini/618 and Mutongungi/Mithini/619 as there is no boundary dispute as provides by section 3 of the land Disputes Tribunal Act No. 18 of 1990 and the same is no longer in existence.*

b. *That the honourable Senior Magistrate’s Court at Kitui has no jurisdiction to enforce the decision of the Kitui Land Case No. 618 & 619 of 2006 due to ground 1 above.*

c. *That the Land Disputes Tribunal acted ultra-vires its jurisdiction as limited under section 3 of the Land Disputes Tribunal Act No. 18 of 1990.”*

4. I have perused the record and unless there is an anomaly, there is no reply to the Application and no submissions were made on behalf of the Respondents or Interested Party although the latter’s advocates filed a Notice of Appointment on 30.7.2008.

5. The issue is really simple and the law on the subject is now settled because in the instant case, the ex-parte Applicant upon the demise of his parents (who were the registered owners of the disputed parcels of land) sometime in 2005 purported to sell the two parcels of land to the Interested Party before any letters of administration had been issued to him. The ex-parte Applicant’s brother, one Mwani Katitu objected to the purported sale and it was agreed between the parties that the ex-parte Applicant should refund monies he had received with interest of Kshs. 3,000/=. He failed to do so and the Interested Party filed his claim in the Tribunal for redress and the Tribunal decided as above.

6. The mandate of the Tribunal is well set out in section 3(1) of the Land Dispute Tribunals Act which provides as follows:-

“Subject to this Act, all cases of civil nature involving a dispute as to-

(a) the division of, or the determination of boundaries

(b) to, land, including land held in common;

(c) a claim to occupy or work land; or

(d) trespass to land.”

7. I agree with the learned advocate for the ex-parte Applicant that although the latter cannot be excused in purporting to sell land for which he had title, the dispute before the Tribunal was not one that it could legally determine. What was before it was neither the issue of trespass, right to occupy land say in a family setting and/or one of sub-division of land. What was before it was right to ownership of land and/or refund of monies paid as purchase price and such a question by fact of section 159 of the Registered Land Act was a matter for the courts as defined in section 2 of the Civil Procedure Act. There are enough authorities on the subject including the decision in Republic vs Kajiado Land Disputes Tribunal ex-parte Lillian Muraya Misc Appl. 689/01(Nrb) per Wenjoh, J.

8. Another issue that arises in this case is that the Tribunal took up the role of a Probate Court under the Law of Succession Act and purported to order the transfer of land belonging to deceased persons without succession proceedings as known to that Act. Again, it acted ultra vires and I agree that once that decision is rendered a nullity, the Senior Resident Magistrate’s Court had nothing to adopt as its

judgment. Without further ado, prayers 1 and 2 of the Motion dated 18.6.2008 are allowed.

9. I shall make no order as to costs as the proceedings before me were unopposed.

10. Orders accordingly.

Dated and delivered at Machakos this 12th day of May 2009.

Isaac Lenaola

Judge

In the presence of: Mr. Mutia holding brief for Mr. Wambua for

Interested Party.

Isaac Lenaola

Judge