



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS CIVIL APPLICATION 546 OF 2007**

**IN THE MATTER OF AN APPLICATION BY ANDERSON NJUGUNA NDUNGU AND  
WILLIAMSON**

**MUHURI FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF LAND PARCELS L.R. No KARAI/GIKAMBURA/2146 & 2147**

**AND**

**IN THE MATTER OF KIKUYU RESIDENTS MAGISTRATE'S COURT MISC. CASE**

**No 8 OF 2007**

**AND**

**IN THE MATTER OF KIAMBU LAND DISPUTES TRIBUNAL CLAIM**

**No. LND/16/70/2007**

**REPBULIC .....APPLICANT**

**VERSUS**

**THE RESIDENT MAGISTRATE'S COURT KIKUYU.....1<sup>ST</sup> RESPONDENT**

**KIAMBU LAND DISPUTES TRIBUNAL.....2<sup>ND</sup> RESPONDENT**

**AMOS KAMAU NDUNGU.....1<sup>ST</sup> INTERESTED PARTY**

**JULIUS NGANGA.....2<sup>ND</sup> INTERESTED PARTY**

**R U L I N G**

Before me is an application by way of Notice of Motion dated 31<sup>st</sup> May 2007 and expressed to be brought under section 9 of the Law Reform Act (Cap.26) and Order LIII Rules 1, 3 and 4 of the Civil Procedure Rules seeking an order of certiorari to remove into the High Court and quash the proceedings of Kikuyu

Resident Magistrate's Court in Misc. **Case No LND/16/70/2007** and an order of prohibition do issue to prohibit the Kiambu Land Disputes Tribunal and the Kikuyu Resident Magistrate's Court from proceeding on matter relating to Land Parcel **No KARAI/GIKAMBURA/2147** in as far as it relates to the title thereof.

The application is based on the grounds as stated on the body of the Notice of Motion and supported by an affidavit sworn by the Applicants on 31<sup>st</sup> May 2007.

The facts which gave rise to this litigation briefly may be stated. One Ndungu Muchiri now deceased the father of the claimants subdivided his parcel of land into 10 equal parcels namely **KARAI/GIKAMBURA/2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154 and 2155** and allocated the same to his children and each took possession of his parcel as follows:

Land Parcel **No KARAI GIKABMURA/2146** Amos Kamau

/2147 - Julius Nganga

/2148 - Hannah Waithera

/2149 - Jane Muthoni

/2150 - James Ndungu

/2151 - Muchiri Ndungu

/2152 - James Nganga

/2153 - George Ndungu

/2154 - Williamson Ndungu

/2155 - Anderson Njuguna

The above portrays the status on the ground an occupied by each person at the time the land was surveyed. But when the titles were issued the numbers were mixed up and did not tally with the actual occupation on the ground.

The number as appeared on the title were as under

Title No Name of occupant

2146 Njuguna

2147 Williamson Muhuri

2148 George Muchiri

2149 James Nganga

2150 Muchiri Ndungu

2151 James Munyua

2152 Jane Muthoni

2153 Hanah Waithira

2154 Julius Nganga

2155 Amos Kamau

Although each of the 10 children had occupied his portion on the ground as shown by their father for over 20 years, when the titles came out, all agreed to continue occupation of parcel as indicated by their late father except Anderson Njuguna who demanded to move from the parcel he occupied i.e No 2155 to parcel No 2146 as shown in the title.

A reference was made to the Kiambu Land Disputes Tribunal. The parties appeared before the Tribunal on 27<sup>th</sup> April 2007 and the Tribunal after listening to the evidence of the claimant and the objectors made a finding that each of the 10 siblings having been shown his parcel of land by their father and each having occupied his portion for the last 20 years and should remain on the parcel he occupied and gave an award accordingly.

The Applicants being aggrieved with this award filed this application for judicial review. Mr Kaburu learned Counsel appearing for the Applicant submitted that the Tribunal had no jurisdiction to entertain the claim and that the Applicants Anderson Njuguna Ndungu and William Muhuri Ndungu being the registered proprietors of land parcels No **KARAI/GIKAMBURA/2146** and No **KARAI/GIKAMBURA/2147** respectively should be allowed to occupy their rightful parcels for which they have titles.

While Mrs Murithia learned Counsel appearing for the Respondents submitted that all the parties are brothers and each was shown a parcel of land to occupy by their late father and each has been in occupation for the last 20 years, each ought to remain where he is.

Counsel further submitted that the errors were only contained in the titles but not the actual possession on the ground. Counsel further submitted that the Applicants having submitted to the jurisdiction of the Tribunal they can't be heard to state that the Tribunal had no jurisdiction.

The Act provides that any party to a dispute aggrieved by the decision of the Tribunal may within thirty days of the decision appeal to the Appeals Committee constituted for the province and the Appeal shall be determined by the Appeals Committee and to the Minister and the decision of the Minister shall be final on any issue of fact and no appeal shall lie therefrom to any court. The right of appeal to the High Court is provided on a point of law only.

The Land Disputes Tribunals Act No 18 of 1990 is an Act of Parliament which is governed by Rules of Procedure and provides how a litigant ought to access the High Court. I agree with Mrs Murithia that the Applicant having submitted to the jurisdiction of the Tribunal they ought to adhere to the Rules of Procedure as provided thereon and only access the High Court as provided there under. Proper administration of justice requires that once a party has surrendered to jurisdiction as in the instant case and that jurisdiction provides a statutory right of appeal, he ought to comply with the rules of procedure as provided for in that jurisdiction and access the High Court on appeal rather than abandon that jurisdiction mid-way and jump to the alternative jurisdiction.

The Act provides a more simplified way of accessing the High Court so that one need not hire the services of a lawyer.

Section 9 of the Act provides that either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of: provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that court has certified that an issue of law (other than customary law) is involved.

For the reasons stated above the Applicants' application must fail.

Accordingly the Notice of Motion is dismissed with costs.

Dated and delivered at Nairobi this 12th day of June 2009.

**J. L. A. OSIEMO**

**JUDGE**