



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
MISCELLAMEOUS APPLICATION 19 OF 2009

REPUBLIC

VERSUS

- 1. IN THE MATTER OF THE LAND DISPUTES TRIBUNAL KIAMBU WEST**
- 2. THE SENIOR RESIDENT MAGISTRATES COURT AT KIKUYU**
- 3. PETER NJENGA WANGA.....RESPONDENTS**

EX-PARTE

LUCY WAMBUI MUNYAKA.....APPLICANT

R U L I N G

Before me is an application by way of Ex parte Chamber Summons brought under Order LIII Rule 1 and 2 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act (Cap 26) Laws of Kenya in which the Applicant Lucy Wambui Munyaka seeks orders:

- (1) That she be granted leave to apply for orders of certiorari to quash the decision of West Kiambu Land Disputes Tribunal made on 22nd December 2008 and adopted on 30th January 2009 in the Senior Resident Magistrate's Court at Kikuyu in Land Case No 3 of 2009.
- (2) That leave so granted do operate as a stay of the decision of West Kiambu Land Disputes Tribunal dated 22nd December 2008.

The application is based on the ground that the West Kiambu Land Disputes Tribunal's decision dated 22nd December 2008 is a nullity because the Tribunal had no jurisdiction over the matter of title; and that the decision of the Tribunal is null and void.

The facts which gave rise to this litigation briefly may be stated. There was dispute between the Applicant Lucy Wambui and the Respondent Peter Njenga Waweru over the suit land being **LR No MUGUGA/KIAMARIRI/104**. The land is registered in the name of Munyaka Waweru the deceased husband of the Applicant and the Respondent is a brother to the deceased Munyaka Waweru. The respondent was the claimant while the Applicant was the objector in the Tribunal. Both parties appeared before the West Kiambu Land Disputes Tribunal and each gave evidence and called witnesses who also gave evidence.

The Elders after listening to the evidence of the claimant, the objector as well as their witnesses made a finding that the suit land was a family land and that the claimant is entitled to 0.099 Acres while his deceased brother was entitled to 0.151 acres which is occupied by his sister in law.

The Land Disputes Act No 18 of 1990 provides that any party 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 any aggrieved party by the decision of the Appeals Committee shall be final on any issue of fact and no appeal shall be therefrom to any court.

The Act provides the right of appeal to the High Court on a point of law within sixty days from the date of the decision complained of. Section 8 (a) of the Act.

“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.”

To the extent that the dispute was filed before the Tribunal and the Applicant submitted to its jurisdiction, presented evidence before it, and both parties called witnesses to testify and who were subjected to rigorous cross-examination and failed to raise the issue of jurisdiction to the Tribunal to handle the matter, he is estopped from raising the issue at this stage. The Applicant having submitted or surrendered to the jurisdiction of the Tribunal ought to have accessed the High Court as provided in the Act hence on a point of law, jurisdiction included. The Act provides a very simplified mode of accessing the High Court which is affordable by the lowly peasants without necessarily going for the services of a Counsel. The main ground for this application is that the Tribunal had no jurisdiction to deal with the dispute and relied on Section 3 of the Land Disputes Tribunal Act No 18 of 1990 which provides:

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

- (a) the division of, or the determination of boundaries to land held in common;
- (b) a claim to occupy or work on land; or
- (c) trespass to land; shall be heard and determined by a Tribunal established under Section 4.
- (d)

Mr. Nyakiangana learned Counsel for the Applicant submitted that the Land Disputes Tribunal exceeded its jurisdiction by deliberating on issues of ownership of the suit land which is registered in the name of Munyaka Waweru deceased husband of the objector Lucy Wambui Munyaka.

At the Tribunal the claimant Peter Njenga Waweru contended that the land the subject matter of this suit was bought by their mother but was registered in the name of his elder brother. The claimant and his mother and his sisters occupied one portion while his deceased brother the husband of the objector occupied the other portion distinct with demarcated boundaries. There is no dispute that the suit land was registered in the name of the claimant’s elder brother and they both lived there with their mother and sisters. Registration of titles are a creation of the law and one must look into the considerations surrounding the registration of the titles to determine as to whether a customary trust was envisaged. Customary trusts was considered in the case of MWANGI & ANOTHER Vs MWANGI 1986 KLR 328 at page 332 where the court said:

“Kikuyu Customary Law recognizes the law of trusts and so does the Registered and Act.”

Section 8 (10) of the Lands Disputes Tribunal Act No 18 of 1990 provides:

A question of the customary law shall for all purposes under this Act be deemed to be a question of fact.

The tribunal is comprised of a Panel of Elders and the Act describes elders as follows:-

Persons in the Community or Communities to which the parties by whom the issue is raised belong and who are recognized by custom in the community or communities as being by virtue of age, experience or otherwise competent to revolve issues between the parties. It is within the jurisdiction of the Tribunal to determine issues involving customary law trusts.

It is upon the Applicant to place sufficient materials before the court to persuade the court to exercise its discretion in his favour.

I am not persuaded. Accordingly I decline to grant the leave as prayed.

Delivered and dated at Nairobi this 12th day of June 2009.

J. L. A. OSIEMO

JUDGE