



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Miscellaneous Application 56 of 2008

REPUBLICAPPLICANT

VERSUS

LAND DISPUTES TRIBUNAL, MARAGUA.....1ST RESPONDENT

SENIOR RESIDENT MAGISTRATE, KIGUMO.....2ND RESPONDENT

AND

CHARLES MUCHOKI NDU.....1ST INTERESTED PARTY

MIRIAM NYAMBURA NDU.....2ND INTERESTED PARTY

PIUS NGUGI NDU.....3RD INTERESTED PARTY

EX - PARTE

SIMON MWANGI NDU

RULING

Simon Mwangi Ndua, the exparte applicant herein, took out the Notice of Motion dated 13th August 2007, pursuant to the provisions of order LIII of the Civil Procedure Rules. In the aforesaid motion the exparte applicant sought for the following orders:

1. *THAT this Honourable Court be pleased to issue an order for certiorari to remove into this court the award of the Maragua Land disputes Tribunal in its land Dispute Case Number 2 of 2007 and the proceedings in Kigumo Senior Resident Magistrate's L.D.T. Case Number 6 of 2007 and quash them.*
2. *THAT the costs of this application be provided for.*

The motion is verified by the affidavit sworn by the applicant. The Land Disputes Tribunal, Maragua and the Senior Resident Magistrate, Kigumo were named as the 1st and 2nd Respondents respectively. Charles Muchoki Ndua, Miriam Nyambura Ndua and Pius Ngugi Ndua were named as 1st, 2nd and 3rd interested parties respectively. Miriam Nyambura Muchoki, the 2nd Interested party herein filed a replying affidavit she swore to oppose the motion. It would appear the Respondents, the 1st and 3rd

Interested parties did not deem it fit to file any response to the motion despite having been served.

Mr. Kirubi, learned advocate for the ex parte applicant urged this court to allow the motion on the basis that the Land Disputes Tribunal had no jurisdiction to hear and determine disputes based on and touching on title to land. It is also argued that the Tribunal had no jurisdiction to hear and determine a dispute based on trust and issues under the Law of Succession Act. Unfortunately, none of the respondents nor Interested parties turned up for the inter partes hearing of the motion save for Mr. Kirubi, learned advocate for the Ex parte applicant despite service of notice. However the law enjoins this court to consider any grounds and or affidavits filed against the motion despite the absence of the parties. A cursory look at the replying affidavit of Miriam Nyambura Ndua reveals that she had filed a complaint before the Maragua Land Disputes Tribunal to be allowed to equal right to work and occupy the following parcels of ancestral land:

- (a) *Loc. 6/Muthithi/1269 measuring 0.92 acres registered in trust in the name of Paul Ndua.*
- (b) *Loc. 6/Muguini/928 measuring 1.38 ha. Registered in the name of Pius Ngugi Ndua.*
- (c) *Loc 6/Muthithi/614 measuring 39 acres registered in the name of Mwangi Ndua.*

She further alleged that she presented her evidence before the Tribunal to prove that she has been cultivating and occupying the land. She said that the Tribunal found that the ex parte applicant was registered as a trustee according to the Kikuyu traditions and customs. The 3rd Interested party was of the view that the Tribunal had jurisdiction to hear and determine the dispute presented before it.

I have carefully perused the material placed before me. The dispute that was placed before the Land Disputes Tribunal is for the subdivision of the aforesaid parcels of land being ancestral land. In fact the complainants who filed the complaint wanted equal shares. At the end of the day, the land disputes tribunal will be required to determine issues touching on trust and the acreage of land due to the beneficiaries of the estate of Paul Ndua, deceased. The aforesaid issues do not fall within the definition of section 3 of the Land Disputes Tribunals Act. The decision of the Land Disputes Tribunal will obviously interfere with the rights of a registered proprietor protected under sections 27 and 28 of the Registered land Act. In the end I am convinced that the Land Disputes Tribunal acted in excess of its mandate hence its decision is amenable to judicial review proceedings. Consequently the Notice of Motion dated 13th August 2007 is allowed as prayed. Since the dispute involve family members I direct that each party bears his or her own costs.

Dated and delivered this 30th day of September 2009

J.K. SERGON

JUDGE