



REPUBLIC OF KENYA
HIGH COURT AT MERU
MISC CASE 27 OF 2009

IN THE MATTER OF AN APPLICATION BY KAURA M’ARIMI TO APPLY FOR ORDERS OF CERTIORARI AND IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF MERU NORTH DISTRICT LAND DISPUTES TRIBUNAL AND IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990 AND IN THE MATTER OF MERU NORTH DISTRICT LDT NO. 57 OF 2006

REPUBLIC APPLICANT

VERSUS

MERU NORTH DISTRICT LAND DISPUTES TRIBUNAL...RESPONDENT

JEREVASIO M’MUGAMBI INTERESTED PARTY

JUDGMENT

The *ex parte* applicant has moved this court by way of notice of motion dated 20th March 2007. By that application, the *ex parte* applicant seeks an order of *certiorari* be issued to remove to this court and quash the decision of Meru North District Land District Tribunal in LDT Case No. 57 of 2006. The *ex parte* applicant relied on the statement of facts and the verifying affidavit annexed to that application. The genesis of this matter was a claim filed by the interested party before the Land District Tribunal Meru North District. The interested parties claim was that his deceased father sold to the *ex parte* applicant a parcel of land which at the time was not adjudicated. It was estimated to measure 2.50 acres. The transaction took place in 1984. The interested party alleged before the Land Tribunal that when the land was adjudicated, it was found to be in excess of 2.50 acres. He stated that it had been agreed between his deceased father and the *ex parte* applicant that any land in excess of 2.50 acres was to revert to his deceased father or the *ex parte* applicant was to purchase it. On visiting the land office, the interested party said he found that the *ex parte* applicant had failed to disclose the excess acreage of that land. He therefore prayed before the Land Tribunal that 1.87 acres which was excess of 2.50 acres be transferred into his name or that the *ex parte* applicant do purchase the same at the current market price. After hearing the evidence adduced before it, the Land Tribunal made the following findings:-

“In the view of the findings above, it is clear that the defendant held an extra 1.87 acres on the land parcel he had registered in his name. The defendant all along had the choice of either compensating the plaintiff on the extra acreage he held or surrender the same to the plaintiff but took too long to realize this. For the interest of fair justice, we rule that the District Land Surveyor Meru North, to annex 1.87 acres from the land parcel No. NYAMBENE/KIRINDINE”A”/3378 and the District Land

Registrar Meru North to register the annexed land portion measuring 1.87 acres from the land parcel No. NYAMBENE/KIRINDINE'A'/3378 in the name of JEREVASIO M'MUGAMBI, hereinafter referred to as the plaintiff in this case."

It is that award that the *ex parte* applicant seeks this court to quash. The *ex parte* applicant in his verifying affidavit stated that he is the registered owner of parcel No. NYAMBENE/KIRINDINE'A'/3378. He stated that he purchased that land from the interested party's deceased father in 1984. He had developed the land by planting cash crops and putting up buildings. That the interested party 22 years after that transaction made the claim before the Land Dispute Tribunal. That in laying that claim, the interested party had not obtained letters of administration for the estate of his deceased father. It is clear that the award of the Land Tribunal exceeded the jurisdiction accorded to the Tribunal by the Land Dispute Tribunal Act Section 3(1). The jurisdiction of the Tribunal is well set out in Section 3(1) of the Land Dispute Tribunal Act. That section 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, including land held in common;

(b) A claim to occupy or work land: or

(c) Trespass to land shall be heard and determined by a Tribunal established under section 4".

That jurisdiction in that section does not extend to the Tribunal having the power to order sub division of registered land and transfer to the applicant. That indeed was the decision of the Court of Appeal in the Case of HCA No. 256 of 2002 **Jotham Amunavi Vrs. The Chairman Sabatia Division Land Disputes Tribunal Enos Kenyani Amunavi.** It stated as follows:-

"The implementation of the decision of the Tribunal entails the sub-division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (see section 89 of the RLA.)

It is clear that the proceedings before the Tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3(1) of the Land Disputes Tribunal Act. By section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrate's court in cases where such latter court has jurisdiction."

The application is merited and the judgment of this court is that the order be and is hereby issued of *certiorari* to remove to this court and quash the decisions of Meru North District Land Disputes Tribunal dated 30th October 2006 in LDT Case No. 57 of 2006. The costs of the application dated 20th March 2007 are awarded to the *ex parte* applicant as against the respondent and the interested party.

Dated and delivered at Meru this 25th day of September 2009.

MARY KASANGO

JUDGE