



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Misc Appli 731 of 2006**

**ISAAC GACHOCHO MWANGI ..... APPLICANT**

**VERSUS**

**THE CHAIRMAN GATUNDU LANDS DISPUTE**

**TRIBUNAL & ANOTHER ..... RESPONDENT**

**RULING**

**I. JUDICIAL REVIEW**

1. This is an application by way of Judicial Review for orders of certiorari and prohibition
  - i) To quash the ruling of the Land Dispute Tribunal Gatundu dated 21.9.06 in LDT No.2 of 2006 and adopted in court on 7.11.06 as judgment by the Resident Magistrates Court at Gatundu No.2/06.
  - ii) To prohibit the respondents either, singly or jointly from taking any proceedings and or making orders similar to or in the same manner as the award and order subject of judicial review.

**II. BACKGROUND**

2. The relationship between the exparte applicant Isaac Gachocho Mwangi and the interested party Mary Njeri Mwangi is that of brother and sister according to proceedings before the respondent magistrate court at Thika and the land dispute tribunal at Gatundu the parties dispute the ownership of land Ndarugu/Gacharage/922 registered in the name of the exparte applicant.
3. The father of the parties Mwangi Thumbi alias Mwangi wa Bui (now deceased) originally owned the land parcel Ndarugu/Gacharage/470. He passed away in 1966 leaving 3 wives. The land was divided equally amongst the three wives and two purchasers through a succession case creating land parcel.
  - i. Ndarugu/Gacharage 921 – given to Nyambura Mwangi – deceased wife/widow.
  - ii. Ndarugu/Gacharage/922 Njoki Mwangi – 2<sup>nd</sup> wife/widow
  - iii. Ndarugu/Gacharage/923 Njambi Mwangi - 3<sup>rd</sup> wife/widow.
  - iv. Ndarugu/Gacharage/924 Njognge Mbagama - a purchaser.
  - v) Ndarugu/Gacharage/925 James Mathina Muriu a purchaser

4. The land parcel in dispute is Ndarugu/Gacharage/922 belonging to the second house. Njoki Mwangi was the mother of the parties. When the husband passed away in 1966 she appears to have permitted the land to be registered in the names of her two sons. The exparte applicant and another. One son seems to have sold his share to the exparte applicant and moved away but the exparte applicant was duly registered in 1974 as the sole proprietor of the land. This is understandable as before the law of succession act came into place in 1981 the inheritance was patrilineal.

5. The interested party was married in 1972 but divorced in 1975. She returned to the home which she knew was given to her mother at the death of her father. Her mother though was alive when the land was registered in the name of the exparte applicant.

6. Sometime in 1983 the interested party divided a share of the property and disputed arose as to the ownership of land. The mother to the party's approved the land to:-

i. The interested party Njoki Mwangi – 1 acre

ii. The exparte applicant Isaac Gachochi – 3 acres

iii. John Kahuga (?) 2 acres

7. The Land Control Board rejected this division on grounds that the land had in fact being transferred to Isaac Gachochi exparte applicant in 1974.

8. Despite this information the land dispute tribunal awarded 1 acre for the said land Ndarugu/Gacharage/922 to the interested party.

9. Was the action Lawful?

### III. **OPINION**

10. The exparte applicant was registered as absolute proprietor of LR Ndarugu/Gacharage/922 in 1974. In the tribunal before the magistrate court at Thika RMCC 52/02 Isaac Gachochi Mwangi vs. Mary Njeri where a claim by the interested party was made, the trial magistrate noted that no fraud was established in the counter claim as to his registration as the owner.

11. Ownership was acquired during the life time of their mother. The claim by the interested party was dismissed. No appeal was preferred.

12. The issue before me is one of jurisdiction. And the land dispute tribunal have jurisdiction to determine the issue of ownership amongst the parties?

13. The mandate of the lands dispute tribunal set up by the Lands Dispute Tribunal and Section 3(1) is to:-

i. Determine boundaries to land including land held in common.

ii. Claim to occupy or work on land and

iii. Trespass to land".

14. By awarding the interested party an acre of land it meant that the tribunal interfered in the ownership of the said land thus touching on the title.

15. The said tribunal lacked jurisdiction to hear a matter based on ownership of land.

16. The interested party is a woman. She is entitled to her fathers' land equally to the sons in her family.

She returned to her parents land after being married but was not able to access a share of that land. This is discriminatory against her as a woman. That was the law then which saw sons entitled to land but not daughters. With the enactment of the law of Succession Cap 160 Laws of Kenya in 1981 to grant children and women in particular equal shares to property from the family land. This case unfortunately before court determined the issue of land ownership prior to the act the appointment of land was done according to customary law.

17. Once title is registered under the registered Lands Act Cap 300 laws of Kenya it becomes absolute to the registered proprietor save in particular instances such as fraud<sup>[1]</sup>.

18. I am asked in this Judicial Proceedings to determine whether the Lands Disputes Tribunal and that of the Magistrates court adopting therein amend and do quash the proceedings. I grant the orders of certiorari and production as prayed for in the notice of motion 22<sup>nd</sup> February, 2007.

20. Costs to the applicant.

DATED THIS 11<sup>TH</sup> DAY OF MARCH 2008 AT NAIROBI

**M. A. ANG'AWA**

**JUDGE**

J.W. Gathoga of Gathoga Wairegi & Co. Advocates for the plaintiff/applicant – present

Mary Njeri Mwangi \_ interested party - present