



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (MILIMANI LAW COURTS)
MISC CIV APPLI 711 OF 2006

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW AND FOR ORDER OF
CERTIORARI AND PROHIBITION**

**IN THE MATTER OF THE DECISION BY THE LAND DISPUTES TRIBUNAL AT
GITHUNGURI KIAMBU DISTRICT JO. LN/16/20/42/2006 MADE ON 31ST OCTOBER 2006
AND FILED WITH THE SENIOR RESIDENT MAGISTRATE GITHUNGURI LAW COURTS
ON 3RD NOVEMBER, 2006**

REPUBLIC.... APPLICANT

VERSUS

THE CHAIRMAN, LAND DISPUTES TRIBUNAL

AT GITHUNGURI, KIABU DISTRICT 1ST RESPONDENT

THE HON. ATORNEY GENERAL 2ND RESPONDENT

THE SENIOR RESIDENT MAGISTRATE

GITHUNGURI LAW COURTS 3RD RESPONDENT

EX PARTE

DANIEL KAGO MACHARIA

MARY NYAMBURA MACHARIA

JAES KIMANI MACHARIA 1ST INTERESTED PARTY

KENNETH MACHARIA KIMANI 2ND INTERESTED PARTY

JUDGMENT

The application before the Court is dated 5th December 2006.

The dispute arises from the distribution of land Parcel No. Githunguri/Kenya/960 which land is in turn registered under the Registered Land Act Cap 300 LOK. The parcel is registered in the name of one Wangui Macharia (deceased). Following her death intestate, Letters of Administration intestate were sought and issued on 12th October 2005 and a confirmed Grant issued as well.

After the confirmation of the Grant, the Interested Party (IP) moved to the Land Tribunal and obtained the award in question in order to block the registration of the land by transmission as stipulated in the Registered Land Act.

The applicants who are beneficiaries now seek judicial orders of certiorari to remove to this Honourable Court and quash the award of the Tribunal and further seeks an order of prohibition to stop the 3rd Respondent Senior Resident Magistrate Githunguri Law Courts from entering and registering the award as a decree of the Court.

The principal grounds relied on by the applicants as per the Statement are:

- 1) The Githunguri Land Disputes Tribunal has no jurisdiction to deal with registered land.
- 2) The Githunguri Land disputes Tribunal had no jurisdiction to override or purport to overrule the High Court findings in HC Succession Cause No. 2486 of 1997 as regards a confirmed Grant relating to the subject matter.

The Interested Parties on the other hand contend that the confirmed grant issued in HC Succession Cause 2486 of 1997 was obtained fraudulently and in total concealment of material facts and they have accordingly filed an application in the High Court - Family Division to have the Grant annulled or revoked which application will come up for hearing next month. It is also contended by the applicants that the tribunal acted within its jurisdiction.

At the outset the matter revolves around the statutory jurisdiction of the tribunal as set out in s 3 of the Land Disputes Tribunal Act. My task is easy in that s 3 has provided a fertile ground for land disputes in this Country and a number of decided cases have emerged all over the country. What I would have said has been repeated many times by my colleagues in the High Court. Thus the Tribunal had no jurisdiction to make a determination or give an award over the ownership of registered land. Failure by an inferior tribunal to correctly address the law in decision making is a ground of intervention in judicial review. The Tribunal clearly exceeded its jurisdiction, under s 3 and acted in excess of jurisdiction. In other words it is clearly acted ultra vires the Act which creates it. Similarly the Tribunal had no jurisdiction to purport to review any orders made by the High Court relating to the same subject matter even if, as contended the order was made in error following alleged concealment of material facts. The jurisdiction lies with the High Court. In the result the Land disputes Tribunal acted without jurisdiction and/or in excess of its jurisdiction and also ultra vires the provisions of the Act.

All these lapses constitute grounds of intervention in judicial review.

I accordingly order that the judicial orders sought do forthwith issue in terms of prayers 1 and 2 of the application dated 5th December, 2006. The award is accordingly quashed and an order of prohibition shall forthwith issue against the Senior Resident Magistrate as prayed.

In view of the pending proceedings in the High Court I make no order as to costs in the circumstances.

DATED and delivered at Nairobi this 7th day of March 2008.

J G NYAMU

JUDGE

Advocates

M Ikapel for the applicants

Mr Enonda for IPS

Mr Giker gor the defendants.