



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

Civil Case 27 of 2007

GEOFFREY KAMAU MWICHIGI APPLICANT

VERSUS

THE SENIOR PRINCIPAL MAGISTRATE

GITHUNGURI1ST RESPONDENT

THE CHAIRMAN GITHUNGURI LAND

DISPUTES TRIBUNAL2ND RESPONDENT

FRANCIS NJIRI KIMANI3RD RESPONDENT

RULING

I: BACKGROUND

1. Both Francis Njiri Mwangi and Geoffrey Kamau Mwachigi bought parcels of land from the original land parcel known as Githunguri/Gathangari/1241 Francis Njiri Mwangi (respondent No.3 herein) and paid Ksh.22,850/- in 1986 and took possession of the land. There was then, no title deed issued or land certificate given to him. Geoffrey Kamau Mwachigi came thereafter in 1989 and bought his share. He then managed to get a land title certificate known as Githunguri/Gathangari/1835 and became the registered owner of his parcel of land but he then included the portion of land that was occupied and owned by Francis Njiri Mwangi.

2. Francis Njiri Mwangi had lived on his parcel of land for 20 years. Instead of filing a suit in the High Court of Kenya for Adverse Possession he went to the elders at the Githunguri Land Disputes Tribunal Court. They in turn awarded:-

i) Geoffrey Kamau Mwachigi 0.208 acres

and ii) Francis Njiri Kimani 0.208 acres

3. This decision arose after hearing both parties at the tribunal .

4. The decision is then filed in the subordinate court for the award to be made part of the courts orders for purposes of enforcing the decision by the Lands Disputes Tribunal. A case SPM No.10/2007 was accordingly filed.

5. The registered owner of the land Geoffrey Kamau Mwachigi had been informed that his title stands revoked and he is to share his land with Francis Njiri Kamani.

6. Geoffrey Kamau Mwachigi filed for Judicial Review Proceeding on 15 October 2007. Leave was granted to him by the courts on 22 October 2007 (Rawal J). A Notice of Motion is required to be filed within 21 days of leave being granted. This was duly done on 8 November 2007.

II: Judicial Review Application 8 November 2007

7. The Exparte applicant Geoffrey Kamau Mwachigi served the Senior Principal Magistrate Githunguri. The chairman Githunguri Lands Disputes Tribunal and Francis Njiri Kamani herein referred to as the 1st, 2nd and 3rd respondent respectively.

8. Only Francis Njiri Kimani appeared and did so in person.

9. The arguments put forward by the exparte applicant is that the Tribunal exceeded its mandate and powers as had been given to them by statute. The exparte applicant is the registered land owner and as a result should not be deprived of his land. The powers to divide land was irregular.

II: Opinion.

10. Judicial Review Proceeding is brought against a body that is administrative in nature or a government body which fails to follow the laid down procedure. If it exceeds its powers then their action is null void or ultra vires.

11. Under the Land Disputes Tribunal Act No.18 of 1990 the Limitation of Jurisdiction of the Tribunal is under Section 3 that states:-

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.”

12. Under the above jurisdiction, the division of properties is not one of the mandates given to the tribunal. This lies only with the courts. The ownership of properties and subsequent division lies with the High Court if the property is under the Registered Lands Act. The subordinate courts limitation to hear land case is restricted to £25,000 or Ksh.500,000/- under the Registered Land Act. The Lands Disputes Tribunal have no limit what so ever to decide on the division of property and ownership of land.

13. I accordingly allow this Judicial Review Proceedings. I quash the decision of the tribunal by bringing in the decision to this court by way of Certiorari and Prohibition orders to prohibit the Principal Magistrate Githunguri Court from enforcing or effecting the award No of 2007 in respect of Land Parcel Githungur/Gathaga/1835.

14. I award no costs. Each party to these proceeding are to bear their own costs.

DATD THIS 29TH DAY OF APRIL 2008 AT NARIOBI.

M.A. ANGA'WA

JUDGE

J.K. Njuguna instructed by Kiarie Njuguna & Co. Advocates for the applicant

Francis Njiri Kimani 3rd Respondent in person – present