



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISCELLANEOUS APPLICATION 1064 OF 2005

SIMON KAMAU NG'ANG'A.....APPLICANT

VERSUS

GATUNDU DISTRICT LAND DISPUTES TRIBUNAL.....RESPONDENT

FRANCIS THUO WANYOIKEINTERESTED PARTY

J U D G M E N T

Before me is a Notice of Motion dated 27th July 2005 filed by M/s Mugo Kamau & Company advocates, on behalf of the ex parte applicant **SIMON KAMAU NG'ANG'A**. The application was filed under sections 8 and 9 of the Law Reform Act (cap.26) and Order 53 rule 3 of the Civil Procedure Act (Cap.21). Leave to file the Notice of Motion was granted by the court on 13th July 2005. The Notice of Motion seeks for the following orders, that ?

- 1. An order of certiorari to remove into the High Court and quash the decision (award) of Gatundu District Land Disputes Tribunal Case No. 7 of 2005 filed in Gatundu Senior Resident Magistrate's Court on 29th April 2005 and read to the parties on 23rd June 2005 which decision dispossessed the Ex Parte applicant herein of his ownership of the property known as KIGANJO/MUNDORO/1212.**
- 2. An order of Prohibition be issued directed at the Gatundu Senior Resident Magistrate's Court barring the said court from adopting the above award or making any further orders in the said matter.**
- 3. An order that the costs of this application be borne by the respondents.**

The application has grounds on the face of the Notice of Motion. It is supported by the statement of facts, as well as the affidavit in support of the application filed with the application for leave.

The respondent, the Land Disputes Tribunal, who were to be represented by the Attorney-General did not participate in the hearing. The counsel for the exparte applicant and the counsel for the interested party filed skeleton arguments. Mr. Mugo appeared for the ex-parte applicant at the hearing. Mrs. Wainaina appeared for the interested party. They both made submissions before me.

I have considered the application, as well as the arguments, both written and verbal. It is agreed by both parties who appeared before me that the subject lands is registered land. It is registered under the Registered Land Act (cap.300). It is described as **KIGANJO/MUNDORO/1212** and **KIGANJO/MUNDORO/1211**. This is actually the land that was dealt with by the Land Disputes Tribunal in the dispute between **FRANCIS THUO WAINAINA** and **JOSEPH NDUNGU WAINAINA**. In the dispute between the two, there were issues raised. These issues related to purchase in 1986; joint registration; a mistake in the partitioning which was to be done, and that one of the parties Mr. Thuo had made developments in portion 1212 while the other party wanted to remove him to portion 1211. The Land Tribunal decided to make an award as follows:?

“The panel considering the submissions given in the case from both sides found it quite in order to award that Mr. Francis Wanyoike should retain his land in the current position and the survey be involved to rectify whatever the anomaly. It is so awarded.”

Several arguments have been made before me. I will first of all deal with the issue as to whether the applicant should have appealed from the decision of the Tribunal, rather than come to the High Court by way of Judicial Review. The law under section 8 of the Land Disputes Tribunal Act No. 18 of 1990, provides that an appeal from the decision of the Tribunal goes to the Provincial Land Disputes Appeals Committee, and a further appeal to the High Court. However, the appeal procedure, is applicable before the award is filed in court. Once the award of the Tribunal was filed in court, the only avenue to challenge the decision of the Tribunal lies to the High Court, through Judicial Review Proceedings. Therefore, in my view, the applicant was quite in order to file those Judicial Review proceedings, as the Gatundu SRM Court has already read the award on 23rd June 2005. This court has jurisdiction to adjudicate on this matter.

There is also an objection with regard to limitation of actions. The argument is that the land in question was subject to a sale in 1986, therefore, an action should not have been commenced after limitation period, presumably 12 years. I do not think that the issue of limitation of actions arises. The issue is not with regard to the sale, but the actual area to be taken by either of the parties in the subject land. The time would only start running, from the time when such a dispute arose, not the time of sale or even the time that the parties started developing the land. The time of dispute on the area to be occupied by the parties. The one who has raised the issue of limitation has not stated when the dispute on the apportionment of land arose. In my view, there is no limitation of actions bar to the proceedings herein.

The jurisdiction of the Land Disputes Tribunals is clearly stated under section 3(1) of the Land Disputes Tribunals Act – No. 8 of 1990, which states:?

“subject to this Act, all cases of a civil nature involving a dispute as to:

- (a) the determination of boundaries of land, including land held in common;**
- (b) a claim to occupy or work land;**
- (c) trespass to land, shall be heard and determined by a Tribunal established under section 4.”**

The award by the Tribunal was clearly not dealing with determination of boundaries to land or division of land. It also did not deal with trespass. The award of the Tribunal which I have highlighted above, shows that the Tribunal determined the issue of title to land. They did not have jurisdiction to do so. In this regard, I am fully in agreement with what was stated by Khamoni J, in the case of **WAMWEA –VS- CATHOLIC DIOCESE OF MURANG’A [2003] KLR 389**, in which the Judge stated?

“section 159 of the Registered Land Act, (cap.300) Laws of Kenya, as read with section 3(1) of the Land Disputes Tribunals Act, make clear the jurisdiction of Tribunals and Land Disputes Appeals Committee under the Land Disputes Tribunal Act. Disputes over title to land are not within the jurisdiction of Tribunals and Land Disputes Appeals Committees under the Land Disputes Tribunals Act.”

The above is good reasoning because the Land Disputes Tribunal Act, is supposed to deal with situation where customary law is applicable. In purporting to determine title to registered land as in our present case, the Tribunal clearly went beyond its jurisdiction. Its decision was therefore null and void. On that ground, I find merits in the application. I will allow the application.

Consequently, allow the application and order as follows?

1. An order of certiorari be and is hereby issued to quash the decision (award) of the Gatundu District Land Disputes Tribunal Case No.7 of 2005, filed in Gatundu Senior Resident Magistrate's Court on 29th April 2005 and read to the parties on 23rd June 2005 which decision has now been brought to this court and quashed.
2. An order of prohibition be and is hereby issued directed at the Gatundu Senior Resident Magistrate court barring the said court from making any further orders in the said matter.
3. Each party will bear their own costs of this application.

It is so ordered.

Dated and delivered at Nairobi this 17th April, 2008.

George Dulu

Judge

In the presence of?

Mr. Mugo for the ex-parte applicant`

No appearance for the respondent

Mrs. Wainaina for the Interested Party

Mwangi – court clerk