

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC. CIV. APPLI. 279 OF 2002 & 297 OF 2002 (Consolidated)

MWAURA GATIMU APPLICANT_

VERSUS

JOHN MBURU GITIMU & ANOTHER..... RESPONDENT

CONSOLIDATED WITH

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

MISC CIVIL APPLICATION NO. 297 OF 2002

MWAURA GATIMU APPLICANT_

VERSUS

1. JOHN MBURU GITIMU 1ST RESPONDENT

2. THE CHAIRMAN (MARAGUA DISTRICT)

LAND DISPUTES TRIBUNAL) 2ND RESPONDENT

RULING

When the court heard the above two matter the counsels consented to one ruling being prepared in respect of both matters. The genesis of this matter was when Mwaura Gitimu filed Miscellaneous Application No. 279 of 2002. In this matter he sought for leave to apply for orders of Judicial Review to remove to the High Court and quash the proceedings and decision of Maragua Land Disputes Tribunal Case No. 121 of 2002. That was heard exparte on 30th October 2002 when leave was granted as prayed. The court did not grant costs in respect of that application. Despite there being no orders for costs Gitimu filed a Bill of Cost which was taxed before the Deputy Registrar on 5th May 2004. It was taxed at Kshs.46,437/= . The taxation was in the absence of the respondent John Mburu Gitimu. That taxation eventually led to execution for costs by way of attachment and sale of the respondent's properties. It should be noted that the other respondent in this matter was the chairman of Maragua District Land Disputes Tribunal. The respondent John Mburu Gitimu has now filed an application in this matter, Notice of motion seeking stay of execution and for the Certificate of costs herein to be set aside.

In respect of Miscellaneous Application No. 297 of 2002 that was where Mwaura Gitimu made the substantive application for certiorari that was heard by this court and the court by its ruling dated 27th June 2003 removed the matter the subject of the tribunal herein to the High Court and proceeded to quash the orders that were given. In that ruling the court granted costs to the applicant. Again in the substantive

matter the respondents were two. There were John Mburu Gitimu and Maragua District Land Disputes Tribunal. The court in granting costs to the applicant it did not indicate which of the two respondents was to pay the costs. Despite that shortcoming the applicant filed a Bill of costs against John Mburu Gitimu. The costs were taxed on 7th April 2005 at Kshs.61,470/-. In this case also John Mburu Gitimu has filed a Notice of motion also seeking for stay of execution and for the setting aside of the costs. The common thread of argument in respect of the two Notice of motions was that costs were not awarded against John Mburu Gitimu. In the Miscellaneous Application No. 279 of 2002 it was argued that the court did not award costs at all. In the case of Miscellaneous Application No. 297 of 2002 it was argued that costs although awarded to the applicant the court failed to identify which respondent was to pay them. The applications were opposed. The first ground of opposition was that the firm of Madahana & CO Advocates were not properly on record for John Mburu Gitimu because leave to act after judgment had not been sought. In submission counsel said that the firm of Madahana had failed to seek leave as required by Order III rule 9A of the Civil Procedure Rules. In response to that I hold that there is no requirement for such leave to be obtained in matters relating to Judicial Review brought under Order LIII of the Civil Procedure Rules. That order is a complete regime by itself and other rules of procedure cannot be imported into it. That argument is therefore rejected. The next ground of opposition was that the applications should have been filed in Nairobi because they fell under Judicial Review. Although counsel did not elaborate on this issue what he seemed to have been alluding to was the practice direction of the Honourable the Chief Justice. The response to that argument is that the Honourable the Chief Justice by Gazette Notice NO. 11042 directed that all applications for Judicial Review under order LIII relating to Land Disputes Tribunal proceedings would be entertained in the appropriate District Registries of the High Court. That being the case the application is correctly before this court. Those are the basic grounds of opposition that were raised. The opposition does not displace the argument in the application before court. In respect of Miscellaneous Application No. 279 of 2002 there was no order made for costs when leave was granted to file an application for Judicial Review. The Bill of costs therefore that was filed and taxed on 5th May 2004 had no basis in law. Accordingly the certificate of costs in that matter dated 26th May 2005 is hereby set aside. In respect of Miscellaneous Application No. 297 of 2002 the court in granting orders to the applicant failed to indicate which respondent would pay costs. The Bill of costs that was subsequently filed against John Mburu Gitimu went contrary to that ruling. Accordingly the costs that were taxed on 7th April 2005 also did not have a legal basis. That taxation is also hereby set aside. In the end the applicant John Mburu Gitimu does succeed in both applications. The cost of the Notice of motion dated 11th July 2007 in both files are hereby awarded to John Mburu Gitimu as against Mwaura Gitimu.

Dated and delivered at Nyeri this 26th day of June 2008.

MARY KASANGO

JUDGE