



REPUBLIC OF KENYA

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

MISCELLANEOUS JUDICIAL REVIEW APPLICATION NO. 1159 OF 2007

REPUBLIC OF KENYA.....APPLICANT

VERSUS

RAPHAEL MUGO WARUI.....RESPONDENT

**EXPARTE.....SAMUEL
MUHIUNGARI**

R U L I N G

This application by way of Notice of Motion brought by the Applicant seeks an order of prohibition to issue prohibiting the District Land Registrar Nyeri or any other persons or authority from acting on or enforcing the award of the Central Province Land Dispute Appeals Committee Appeal No. 90 of 1999 and the judgment and decree in Chief Magistrate's Court Civil Case No. 237 of 1989 in respect of **LR No MAGUTU/GATHEHU/54**.

The relief is based on the ground that the decision of the provincial Land disputes Appeals committee and the judgment of Nyeri Chief Magistrate's Court are a nullity as the Tribunal had no jurisdictions to deal with the claim as laid out in the amended plaint and Defence in Nyeri CMCC No. 237 of 1989 as it dealt with transfer of title of land, compensation; mesne profits trust and fraud.

The facts which gave rise to this litigation briefly may be stated.

By amended plaintiff dated 16th March 1990 the Applicant brought this suit against the Respondent seeking:

- (a) An order that the Defendant do transfer the aforesaid portion of land measuring 0.8 of an acre out of LR No **MAGUTU/GATHEHU/54** to the Plaintiff or adequate compensation for the said 0.8 of an acre including mesne profits.
- (b) A declaration that the Defendant holds the said portion of land in trust for the Plaintiff.
- (c) A declaration that the sale and transfer of the said 0.8 of an acre was fraudulent and is null and void.

By consent of both parties the dispute was on 12th September 1999 referred to the Nyeri District Land Disputes Tribunal for determination. The matter was heard by the Tribunal and both parties participated and called witnesses. After the Tribunal heard the evidence of both parties and their witness as it decided dispute in favour of the Plaintiff.

The Defendant appealed to the Provincial Appeals committee and the Provincial Appeals Committee ordered that the Defendant do transfer 0.8 of an acre to the claimant and the claimant was informed of his right of appeal to the High Court on a point of law within 60 days. But the claimant did not appeal within the statutory period and on application the decision of the Provincial Land Disputes Appeals Committee was adopted and entered as judgment of the court on 25th April 2002.

This land dispute between the Plaintiff and the Defendant in Nyeri CMCC No 237 of 1989 over the suit land **LR No. MAGUTU/GATHEHU/54** was referred to the Land Disputes Tribunal by the court order dated 12th January 1999 under Rule 3(4) of the Land Disputes Tribunals (Forms and Procedure) Rules 1993 which states as follows:-

“(4)” where a court either on its own initiative or on a request by a party in a suit before it, refers a dispute for determination by a Tribunal the reference shall be made in Form D set out in the first Schedule.

Rule 8 of the said Land Dispute Tribunal Rules states as follows:-

“Notwithstanding the provisions of rule 7, a court may on its own motion or on an application by a party in a civil suit before it, refer any dispute for determination by an appropriate tribunal and where such dispute is referred the tribunal shall follow the procedure provided for in these rules.”

When the dispute was referred to the Land Disputes Tribunal by the Court, the tribunal became vested with power or jurisdiction to hear and determine the matters in dispute between the parties in Nyeri CMCC No. 237 of 1989. This jurisdiction was conferred upon the tribunal through the referring court order.

As provided for under Section 8 (9) of the Act either party may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of.

The Applicant having submitted to the jurisdiction of the Tribunal, presented his evidence on the merits of the suit and failed to raise the issue of the Tribunal’s jurisdiction to handle the matter, he was estopped from raising the issue. See **PETER NGANGA MUIRURI vs. CREDIT BANK LIMITED AND TWO OTHERS CA No 203 of 2006** (unreported) where the Court of Appeal held that to the extent that the Appellant’s Counsel submitted to the jurisdiction of the Chief Justice, presented submissions before him on the merits of his originating summons and in those submissions failed to raise the issue of the Chief Justice’s jurisdiction to handle the matter, he was estopped from raising the issue.

I would respectively point out to the Applicant that having surrendered to the jurisdiction of the tribunal and having failed to follow the proceedings as provided in the Act as to the right of appeal this matter had been concluded when judgment was entered. Any attempts to revive it can only have one outcome – failure.

In the result the Applicant’s application is dismissed with costs to the Respondents.

Dated and delivered at Nairobi this 24th day of September 2008.

J. L. A. OSIEMO

JUDGE