



REPUBLIC OF KENYA

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

Misc Appli 126 of 2006

SARAH WAMBUI MUGO.....APPLICANT

Versus

LAND DISPUTE TRIBUNAL MARGUA1ST RESPONDENT

CHIEF MAGISTRATE'S COURT THIKA.....2ND RESPONDENT

ELIZABETH MUCIKU KANIARU.....INTERESTED PARTY

JUDGMENT

By a Notice of Motion dated 4th April 2006, the ex parte Applicant, Sarah Wambui Mugo seeks two orders of Judicial Review namely:-

- (1) an order of prohibition, prohibiting the Chief Magistrate's Court Thika from hearing or undertaking any further proceedings or issuing any orders in Land Disputes Tribunal (DO) Case No. 6/06 Thika and Maragua Land Disputes Tribunal affecting ownership of land parcel LOC 5/GITURA/304;
- (2) an order of certiorari to bring to the High Court and quash the proceedings and award of Maragua Land Disputes Tribunal in respect of Land Parcel LOC 5/GITURA/394 and proceedings in Land Disputes Tribunal case No. 6/2006 at Thika Chief Magistrate's Court.

The application is supported by the statutory statement dated 14th March 2006 and a Verifying Affidavit sworn by the Applicant Sarah Wambui Mugo and dated 14th March 2006.

The Application was opposed and the Interested Party filed a Notice of Preliminary Objection dated 22nd June 2006 in which it was contended that the Judicial Review Application is defective and incompetent. The Interested Party's Counsel, Waithera Mwangi also filed skeleton arguments dated 26th July 2006.

The grounds upon which the Application is brought are that the Applicant is the registered proprietor of the Land parcel LOC 5/GITURA/394 and that the Land Disputes Tribunal has made an award in favour of the Interested Party irregularly since the Tribunal had no jurisdiction to entertain matters pertaining to title or ownership to land. The Applicant exhibited a title deed in the name of the Applicant in respect of the suit land. The land is said to measure about 0.40 ha.

Before I consider the merits of the Application, may be I should consider the Interested Party's Preliminary Objection. The Interested Party contends that the Application by which the Applicant sought leave of the court, to bring Judicial Review Proceedings and that in which the Applicant seeks orders of

Judicial Review is brought in the name of the wrong persons and is muddled up in substance. I have seen the Chamber summons application for leave to bring Judicial Review proceedings dated 15th March 2006. It is titled ex parte Chamber Summons. The Applicant is Sarah Wambui Mugo, the Respondents are the Land Disputes Tribunal Maragua and Chief Magistrate's Court Thika while the Interested Party is Elizabeth Muciku Kaniaru. The Notice of Motion dated 4th April 2006 is brought in the name of the Republic as the Applicant, the Respondents are the Land Disputes Tribunal Maragua and Chief Magistrate's Court Thika, the Interested Party is Elizabeth Muciku Kaniaru whereas the ex parte Applicant is Sarah Wambui Mugo. Though there may be a slight anomaly with the arrangement of the Application, I find no defect in the Notice of Motion. It is properly intituled as set out in the **FARMERS BUS SERVICE & OTHERS V THE TRANSPORT LICENSING APPEAL TRIBUNAL (1959) EA 779** and adopted by J. Ringera in the case of **JOTHAM MULATI WELAMONDI V THE CHAIRMAN ELECTORAL COMMISSION OF KENYA**

APPEAL 81/2002. In a Notice of Motion seeking orders of Judicial Review, the applicant should be the Republic and that has been properly done by the Applicant. The Preliminary Objection has no merit and is dismissed.

No doubt the Applicant is the registered proprietor of the suit land Parcel LOC. 5/GITURA/394 as per the title deed exhibited 'SWMI'. I have also seen the ruling of the Land Disputes Tribunal in which it was ordered that Serah Wambui Mugo do surrender 0.5 acre from land LOC 5/GITURA/394 to the Interested Party and that if she failed to do so, the Registrar of the High Court be ordered to sign all the relevant applications for consents. The question is whether the tribunal had jurisdiction to deal with disposition of land. The Land Disputes Tribunal Act No. 18 of 1990, Section 3 mandates the Tribunal to deal with three things, disputes relating to trespass to land, division of or determination of boundaries to land including land held in common, and a claim to occupy or work land. The Land Disputes Tribunal Thika did not have jurisdiction to determine questions of ownership of land as it purported to do. It exceeded its jurisdiction by subdividing the Applicants land and disposing it to the Interested Party. Besides this being registered land, the only recourse that the Interested Party had was to file a suit in the civil courts for redress. Though the award was made by the tribunal on 10th January 2006, the award was adopted by the court on 28th February 2006. The application for Judicial Review has been sought within time. This court finds that the order of the Land Disputes Tribunal was made without jurisdiction, and therefore null and void and cannot be allowed to stand. The award by the Land Disputes Tribunal Maragua having been declared null and void and it follows that the orders of the court adopting the award are likewise null and void and are hereby quashed by order of certiorari and the Chief Magistrate's Court is prohibited from hearing or undertaking any further proceedings in Case No. 6/06.

Costs of the Application to the Applicant.

Dated and delivered this 27th day of April 2007.

R.P.V. WENDOH

JUDGE

In presence of:

Ms. Obare Hold brief for Mugo for applicant

Daniel: Court Clerk