



REPUBLIC OF KENYA

IN THE HIGH COURT AT EMBU

Misc Civ Appli 5 of 2006

MWAURA KIMUHU.....APPLICANT

VERSUS

CHAIRMAN MARAGUA LAND DISPUTES TRIBUNAL...1ST RESPONDENT

SAMUEL NG'ANG'A.....2ND RESPONDENT

RULING

By Notice of Motion dated 17/7/2006 the Applicant seeks Orders of Certiorari to issue to quash the decision of *Maragua Land Disputes Tribunal Case Number 171 of 2004 and the orders of Murang'a Principal Magistrate's Land Dispute Tribunal No. 61 of 2004* adopting the said award into a court decree. The statutory statement accompanying the application shows the grounds upon which the application is made namely that the Tribunal has no jurisdiction to entertain matters regarding titles to land, that the Tribunal acted ultra vires since it had no jurisdiction to compel the applicant on how to subdivide his land, the award negates the privileges bestowed upon the applicant by Registered Land Act and since the award was nullity ab initio the nullity vitiates the proceedings before the subordinate court. The verifying affidavit shows annexure "MK – 1" Certificate of Official Search which indicates that Applicant was registered as proprietor on 2/4/1965 and Land Certificate (Title Deed) was issued on 17/1/1977 his title is absolute. In the year 2005 Samwel Ng'ang'a Mwaura filed a caution claiming "Beneficiary Interest". This information is in respect to parcel No.Loc.6/Mugwimi/240 again annexure MK 2 shows that the applicant is registered proprietor of Title location 6/Cukarangu/516 since 27/1/67. His title is "absolute".

On 28/2/2005 Samwel Ng'ang'a Mwaura registered a caution claiming licensee interest.

I have read the proceedings before the Tribunal. It is clear the 2nd Respondent the said Samuel Ng'ang'a is the son of the Applicant and he has been residing on land given to him by his father, the applicant. The dispute before the tribunal was filed by the applicant. He told the Tribunal:

1. that he had accused Samwel Ng'ang'a, his son for refusing to move to the piece land I have given him on plot No. Gikarangu to share with his brothers "insisting to stay where I am". Parcel No. Loc.6/Mugwimi/240". It is clear that he was willing to subdivide his registered land Loc.6/Gikarungu and share it as follows:-

1. Caxton Wanyoike - 1.6 acres

1. Samuel Ng'ang'a - 1 acre

3. Himself - 0.7 acres.

He prayed the Tribunal to enact his wishes.

After considering the submissions of the parties and witnesses called by the 2nd Respondent. Tribunal made award thus:-

1. "That Samuel Ng'ang'a has life interest in both lands of his father that is plot No.516/Girangu, No.240/Mugwimi".
2. "the father is restrained from interfering with Ng'ang'a (son) property wealth and animals".

What is to be noted here firstly there is no law in this country to compel a person to subdivide his land registered under Registered land Act among his children during his lifetime. The assets of a person are distributed, upon his death under the provisions of Succession Act Cap 160 Laws of Kenya. The other point is that the

Applicant has agreed to the Respondent to take and share the plot 516/Gikarangu with his brothers in certain proportions. To give effect to that award it would mean that the two pieces of land would have to be subdivided new titles be registered and that would be interfering with the titles of the applicant. The award made by the Tribunal and entered as Judgment of the **Murang'a Principal Magistrate's Court** is a nullity and the same is hereby quashed for having been made without jurisdiction and being totally against the law of the land.

The application is allowed and orders granted as prayed.

Dated this 4th May, 2007.

J. N. KHAMINWA

JUDGE

4.5.2007

Khaminwa – Judge

Njue – Clerk

Mr. Mogusu HB for Okwaro

Ruling read in open court.

J. N. KHAMINWA

JUDGE