

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Misc Appli 24 Of 1999

GAKUHA GACHERU INTERESTED PARTY

REPUBLIC OF KENYA APPLICANT

VERSUS

DISTRICT LAND REGISTRAR, NYERI RESPONDENT

RULING

By a notice of motion brought under Order 53 rule 3 of the Civil Procedure Rules, the ex-parte applicant Ngunjiri Ayub seeks an order of prohibition against the District Land Registrar, Nyeri prohibiting him from determining an alleged boundary dispute between land parcel Nos. Thegenge/Ihithe/181 and Thegenge/Ihithe/182. It is the applicant's contention that there is no boundary dispute between the two parcels of land and that the proprietor of Thegenge/Ihithe/182 has never at any time complained to the applicant who is the proprietor of Thegenge/Ihithe/181. It is further the applicant's contention that the boundary between the two land parcels is well marked with trees and a barbed wire fence.

The applicant has exhibited a letter dated 27th January 1999 addressed to him by the District Land Registrar requesting his attendance to deliberate on a boundary dispute pursuant to section 21(2) of the Registered Land Act.

Gakuha Gacheru who is the registered proprietor of land parcel Thegenge/Ihithe/182 objects to the application contending that there is no good reason why the boundary should not be determined and that the land Registrar is entitled under Section 21(2) of the Registered Land Act to determine the boundary and therefore there was nothing irregular about the notice served on the ex-parte applicant by the land Registrar. Section 21 of the Registered Land Act states as follows:

"21(1) Except where under section 22 it is noted in the register that the boundaries of a parcel have been fixed, the registry map and any filed plan shall be deemed to indicate the approximate boundaries and the approximate situation only of the parcel.

(2) where any uncertainty or dispute arises as to the position of any boundary, the Registrar on the application of any interested party shall, on such evidence as the Registrar considers relevant, determine and indicate the position of the uncertain or disputed boundary."

In this case it is evident that the Land Registrar was acting on the request of Gakuha Gacheru to have the boundary determined. While the applicant contends that the two land parcel have had a boundary defined by trees and a barbed wire, there is no evidence that there is any notation in the register that the boundary has been fixed so as to bring the boundary within the exception provided in section 21 (1) of the Registered Land Act.

It is evident that the land Registrar acted within his statutory powers as provided under section 21 of the Registered Land Act.

The remedy of judicial review by prohibition is a remedy provided for curbing excess of jurisdiction or departure from the rules of natural justice by judicial or quasi judicial bodies (see **Kenya National Examination Council and Re Exparte Geoffrey Gathenji & others Nairobi CA 266 of 1986**)

In the words of Khamoni J. expressed in **Republic V/S The Commissioner of Police Ex-parte Ben**

Nyamweya HC. Misc. application No. 1404 of 1998 “such a prerogative order is an order of a serious nature and cannot and should not be granted lightly. It should only be granted where there is abuse of the process of law.

In this case there was clearly no exercise of excess powers by the District Land Registrar, nor was there any breach of the rules of natural justice or abuse of the process of the law so as to call into play the exercise of this courts supervisory role or justify the granting of an order of prohibition.

I therefore find no merit in the notice of motion dated 26th February 1999. The same is dismissed with costs.

Dated signed and delivered this 4th day of April 2006.

H. M. OKWENGU

JUDGE