



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Misc Appli 820 of 2005**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF  
CERTIORARI**

**AND**

**IN THE MATTER OF THE NYANDARUA DISTRICT**

**LAND REGISTRAR'S FINDINGS & RULING OVER L.R. NO. NYANDARUA/MBUYU/323 &  
967 DATED 8<sup>TH</sup> JUNE, 2005**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**NYANDARUA DISTRICT REGISTRAR ..... RESPONDENT**

**AND**

**JOHN KIBOI WAMBUGU ..... INTERESTED PARTY**

**EXPARTE**

**SIMON NDUMIA KIMENJUI ..... SUBJECT**

**RULING**

Simon Ndumia Kimenju filed this application for Judicial Review on 20<sup>th</sup> December 2005 pursuant to the leave of this court granted on 8<sup>th</sup> December, 2005.

The applicant has sought for orders of Certiorari to remove to the High Court and quash the decision of findings and ruling of Nyandarua District Land Registrar dated 8<sup>th</sup> June, 2005.

The grounds giving rise to the relief sought by the applicant are stated in the body of the application and more specifically expounded in the statement and the supporting affidavit of the applicant sworn on 7<sup>th</sup> December, 2005.

The facts of the case that have snow balled into the present dispute may be stated briefly. The applicant is the registered proprietor of **Title No. Nyandarua/Mbuyu/323 measuring 3.22 hectares** where he has been in occupation since 1977.

On or about 7<sup>th</sup> December, 1989 the respondent one **John Kiboi Wambugu** was allotted Plot No. 967 Mbuyu Scheme by the Settlement Fund Trustees. The applicant alleged that the respondent uprooted the boundary sisal hedge and cut down trees dividing the applicant's land and the adjacent free land from which his plot was created.

According to the applicant this incident was reported to the authorities vide the applicant's letters dated 3<sup>rd</sup> January, 1990, 15<sup>th</sup> February, 1990 and 23<sup>rd</sup> July, 1990 all the letters were addressed to the District Officer, Ndaragwa Division with copies to the District Commissioner, Nyandarua.

On 16<sup>th</sup> December, 1993 the District Commissioner requested the District Land Registrar to deal with the matter but it was not until 7<sup>th</sup> April, 2005 that the dispute was attended to by Mr. C.W. Ngechu the Nyandarua District Land Registrar whose ruling is dated 8<sup>th</sup> June, 2005. The applicant has attacked the decision of the District Land Registrar on the grounds that in ascertaining the boundary he relied on unspecified circular on Land boundary dispute purportedly issued by the Chief Land Registrar and failed to rely on Registry Index Map (R.I.M) as an authority for determining boundaries. The applicant also complained that the District Land Registrar did not allow him to give a historical back ground of the dispute and neither did he allow his witnesses to testify. The applicant also faulted the ruling by the District Land Registrar for ordering the removal of his huts from parcel No. 967 which he claimed occasioned him loss of about 3 acres of his land and for ordering him to pay the respondent unspecified costs.

Lastly, the applicant alleged that the District Land Registrar exceeded his jurisdiction in handling the matter and delved into the claim which was clearly time barred by virtue of the limitation of Actions Act. The respondent did not file a replying affidavit but chose to address the Court. He contended that he is the owner of plot No. 967 which is separated from the applicant's parcel of land by a road. He claimed that it is the applicant who has blocked the road.

In considering the remedy sought by the applicant, I have taken into account that this is a discretionary remedy that must be granted only on the basis of evidence and sound legal principles. (**See the case of Weda & 14 others –VS- the Council of Legal Education H.C. Misc. Appl. No. 5 of 1993**). Relevant considerations to bear in mind is that discretionary powers must always be exercised in good faith, for the purpose for which they were granted and within the limits of the Act or other instrument confirming the power. Discretion must also be exercised fairly, not capriciously, and in accordance with proper legal principle and these standards imply that all relevant considerations must be taken into account and that extraneous considerations be disregarded by the person or body exercising the power (**See Halsbury's Laws of England 4<sup>th</sup> Edition Vol. 1 page 70** ).

In this case it is clear that the applicant applied to the District Officer with copies of the letters to the District Commissioner regarding the encroachment of his land by the respondent whom he alleged was allotted part of his land.

The District Commissioner seemed to have referred the dispute to the District Land Registrar on 10<sup>th</sup> December, 1993 but for unexplained reasons the matter was not acted upon until the 7<sup>th</sup> of April 2005, 12 years down the line.

**Under the provisions of section 21(2) of the Registered Land Act Cap. 300:**

*“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 consider relevant, determine and indicate the position of the uncertain or disputed boundary.*

**(3) *Where the Registrar exercises the powers conferred by subsection (2), he shall make a note to that effect on the Registry map and in the register and shall file such plan or description as may be necessary to record the decision.***

**(4) *No Court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this section.***

**(5) *Except where, as aforesaid, it is noted in the register that the boundaries of a parcel have been fixed, the court or the registrar may, in any proceedings concerning the parcel, relieve such evidence as to its boundaries and situation if it or he thinks fit.”***

The principle issue for determination is whether the decision of 8<sup>th</sup> June, 2005 was without jurisdiction for dwelling on issue of claim on land and the awards pronounced on removal of huts and payment of damage. The records clearly show that it is the applicant who initiated the process of determining his dispute through his letter written in 1990 with the Administrative authorities who referred the matter in 1993 to the District Land Registrar for determination. The issue for determination of boundary was referred to the District Land Registrar in 1993.

Counsel for the applicant submitted that this claim was time barred by the time the District Land Registrar purported to adjudicate on the same, according to the provisions of the limitation of Actions Act. An action to recover land may not be brought by any person before the end of twelve years from the date on which the right of action accrued to him. I find this argument by the applicant preposterous as he is the one who filed the dispute which was referred to the District Land Registrar. In any case what ought to have been determined by the District Land Registrar is not a claim for Land but only the boundary dispute.

Thus according to provisions of section 21 of the Registered Land Act the District Land Registrar can determine a boundary dispute and he can do so using the registry map and any field plan to indicate the approximate boundaries and the approximate situation only of the parcel of land.

In this case, the Land Registrar should not have determined any other issue apart from determining the boundaries. To the extent that the District Land Registrar ordered the applicant to remove his huts from parcel No. 667 and ordered him to pay damages and cost for inconvenience and cost of the respondent's front teeth as a result of beatings to the respondent, that part of the ruling was **ultra vires** and was reached without jurisdiction. I have considered the entire ruling by the District Land Registrar and although he is entitled in law to determine boundary dispute, the ruling on determination of the boundary is also vague for failure to indicate the actual position or situation if the boundaries on parcels of land.

Thus although the order of certiorari cannot lie on this irregularity alone, as analysed above, the District Land Registrar purported to act without jurisdiction when he made other orders. I am satisfied that the decision should be quashed.

Accordingly the decision of the Land District Registrar made on 8<sup>th</sup> June, 2005 is hereby quashed. For reason that the matter was instituted by the applicant who did not object to the proceedings I will order each party to bear their own costs of these proceedings.

It is so ordered.

**Ruling read and signed on 14<sup>th</sup> July, 2006.**

**MARTHA KOOME**

**JUDGE**