



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

**Misc Appli 270 of 2005**

**REBO KARARI.....  
.....APPLICANT**

**GEORGE WAGUCHU KARARI.....  
INTERESTED PARTY**

**versus**

**CHAIRMAN GATUNDU NORTH LAND DISPUTE TRIBUNAL.....  
.....RESPONDENT**

**JUDGEMENT**

The ex parte applicant, Rebo Karari came to this court by way of Notice of Motion dated 9<sup>th</sup> March 2005 seeking the following orders;

- (a) that this court do issue an order of certiorari to remove into the High court the award of the chairman of the Gatundu North Land Disputes Tribunal made on 24<sup>th</sup> December 2004 in reference to Gatundu North Land Disputes Tribunal case No. 23/04 and quash the same by order of certiorari.
- (b) That the court be pleased to make such orders as are fit, fair and just.
- (c) Costs of the application be provided for.

The application is expressed to be brought pursuant to the Law Reform Act, Land Disputes Tribunal Act, S 3A Civil Procedure Act and order 53 Rule 3 Civil Procedure Rules.

The application is supported by a statutory statement dated 21<sup>st</sup> February 2005 and a verifying affidavit of the same date.

The grounds upon which the application is brought are that

- (a) The applicant is the registered proprietor and owner of land parcel Ngenda/Karuri/1699 to the exclusion of all others;
- (b) The dispute that was brought by the Interested Party to the Gatundu North Land Disputes Tribunal was illegal, null and void as the Interested Party did not have a locus standi;
- (c) That the Tribunal lacked jurisdiction to entertain the matter;

(d) That the award was prejudicial to the applicant's sole interest in respect of land parcel No. Ngenda/Karuri/1699;

(e) That the whole proceedings were fraudulent and a total violation of the principles of natural justice.

The applicants counsel also filed skeleton arguments.

The respondents opposed the application on points of law. No papers were filed in reply.

The ex parte applicant is the registered owner of the suit land Ngenda/Karuri/693. A title deed was exhibited to that effect. The Interested Party commenced proceedings against the applicant in Land Disputes Tribunal Gatundu North Division No.23/04 seeking to be given a share of the land. The elders made an award in tribunal case No. 23/04 where it was been ordered that the applicant give the Interested Party a share of the suit land. It is the applicant's case that the award was prejudicial to his proprietary interest in the land, the Interested Party lacked locus standi in the matter and the award contravenes the provisions of the constitution and Registered Land Act.

Applicant's Counsel relied on two decisions

**1. GIBSON SENGETE MATOLO V EASTERN PROVINCIAL LAND DISPUTE COMMITTEE AND OTHERS MISC APPLICATION 331/03**

**2. ASMAN MALOBA WEPUKHULU AND FRANCIS BIKETI CA 157/01,**

Where both the High Court and Court of Appeal respectively, held that the Land Disputes Tribunal had no jurisdiction to determine matters dealing with ownership of land which is registered under the RLA. It was further submission of the applicant that if the Interested Party has any claim to the said land, he should file a suit in the ordinary courts.

In response to these submissions, Mr. Warigi submitted that there is a misconception that tribunals lack jurisdiction to deal with Registered land but that under Section 3 (1) of the Land Disputes Tribunal the tribunal can deal with all types of land whether it relates to division or not and the tribunal was well within its powers to deal with the suit land. He drew the court's attention to the history of how the Land Dispute Tribunal came into being. It was so that elders who knew the parties and knew the land could help in making a fair decision.

I have considered the submissions of both counsel and it is not in doubt that the applicant is the registered proprietor of the land in issue, Ngenda/Karuri/693.

It is also not in dispute that when the Interested Party filed the matter before the Gatundu North Land Dispute Tribunal, the tribunal decided that the share of Interested Party's father be given to the Interested party. It means that they were ordering that the same land be divided so that part of it goes to the applicant and the other to the Interested Party. That would result in the creation of two titles and hence the issue involved ownership of the said land that related to title. Did the tribunal have jurisdiction in such a matter?

S. 3(1) of the Land Disputes Tribunal Act is the Section that grants jurisdiction to the tribunals. It provides as follows:

**“3 (1) subject to this Act, all cases of a civil nature involving a dispute as to-**

**(a) the division of or the determination of boundaries to, land including land held in common;**

**(b) a claim to occupy or work land. Or**

**(c) trespass to land,**

**Shall be heard and determined by a tribunal established under Section 4”**

My understanding of that provision and which I tend to agree with the respondent’s counsel is that it does not specifically oust the jurisdiction of the tribunal in relation to land held under the Registered Land Act. Under the above provision, I believe that if it is a matter relating to boundaries or claim to work land or trespass then the tribunal has jurisdiction to entertain it even if registered under the Registered Land Act, provided it does not affect the title in question. Even on division, I believe the tribunal can have jurisdiction provided it does not touch on the title. I do find however, that there is no provision donating any powers to the Land Disputes Tribunal to determine disputes relating to ownership of land or title to land under that section.

It is clear the proceedings before the tribunal related to title to land and beneficial interest in the suit land.

As a result, I do find that the Gatundu North Land Dispute Tribunal in purporting to share the land between the applicant and the Interested Party in so far as it would affect the title to the land, exceeded its mandate and hence acted ultra vires its powers. By Section 159 the Registered Land Act, such a dispute can only be tried by the High Court or Resident Magistrate’s Court in cases where they have jurisdiction. The proceedings before the Land Disputes Tribunal were therefore a nullity and fall under the purview of Judicial Review. The proceedings before the Land Disputes Tribunal and subsequent orders of the court are a nullity and are ordered brought before this court for quashing and are hereby quashed by order of certiorari.

Each party to bear their own costs.

Dated and delivered this 7<sup>th</sup> day of July, 2006.

R.P.V. WENDOH

JUDGE

Read in the presence of Mrs. Munene hold brief for Mr. Njoroge for applicant

Mr. Imendi holding brief for Mr. Kariuki for Interested Party

**R.P.V. WENDOH**

**JUDGE**