



REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CIVIL APPEAL 129 OF 2002
IN THE MATTER OF THE REPUBLIC APPLICANT
VERSUS
NYAHURURU DIVISION LAND DISPUTES TRIBUNAL.....1ST RESPONDENT
RIFT VALLEY PROVINCE LAND DISPUTES
APPEALS TRIBUNAL..... 2ND RESPONDENT
CHIEF MAGISTRATE COURT AT NAKURU.....3RD RESPONDENT
AND
MONICA WANJIKU INTERESTED PARTY

RULING

The applicant filed a notice of motion under Order LIII Rule 3(1) of the Civil Procedure Rules and prayed for an order of certiorari to remove into this court and quash the proceedings and award of Nyahururu Division Land Disputes Tribunal in case no. 3 of 2000, Rift Valley Provincial land Disputes Appeals Tribunal (unnumbered) and the Decree issued in Nakuru Chief Magistrates Land Disputes Case No. 18 of 2002 on 10th August, 2002.

The application was made on the grounds that: (a) The Nyahururu Division Land Disputes Tribunal was a nullity as the Tribunal was constituted against the provisions of the Land Disputes Tribunals Act No. 18 of 1990.

(b) The Rift Valley Land Disputes Appeals Tribunal proceeded to hear and determine the dispute before it without jurisdiction or in excess of its jurisdiction.

(c) The Tribunal's decisions and the adoption order made in Nakuru CM Land dispute case no. 18 of 2002 contravened the provisions of sections 27 and 28 of the Registered Land Act cap 300 of Kenya as the Tribunals could not adjudicate on a land dispute concerning title on Registered Land or beneficial interest over land.

(d) The proceedings before the Appeals Tribunal were defective in form and substance and could not found judgment of a court of law.

(e) The Tribunals proceedings and the Chief Magistrate's court acted in excess of jurisdiction by dealing with a matter that was res judicata in view of succession cause no. 104 of 2000 relating to the estate of

Esther Wangui Nganga (deceased) which constituted the suit land.

In the affidavit sworn by Esther Wangui Ngare in support of her application, she deposed that she was the defendant in Nyahururu Division Land Disputes Tribunal Case No. 3 of 2000 which was instituted by one Monica Wanjiku Jesses claiming beneficial interest in original land reference no. Laikipia/Nyahururu/1202 in the name of Esther Wangui Nganga (deceased) which constituted the suit land.

In the affidavit sworn by Esther Wangui Ngare in support of her application, she deposed that she was the defendant in Nyahururu Division Land Disputes Tribunal Case No. 3 of 2000 which was instituted by one Monica Wanjiku Jesse claiming beneficial interest in original land reference No. Laikipia/Nyahururu/1202 in the name of Esther Wangui Nganga (deceased). She further stated that although she informed the tribunal that the registered proprietor of the suit land was deceased, it still proceeded to hear the matter and awarded the plaintiff therein five acres constituting L.R No. Laikipia/Nyahururu/1324 and 1325 being subdivisions of the original parcel no. Laikipia/Nyahururu/1202. She then appealed to the Rift Valley Provincial Land Disputes Appeals Tribunal which, upon hearing the appeal, confirmed the award of the Nyahururu Division Land Disputes Tribunal. The award was then read and adopted as a judgment of the court. The effect of the awards was that Monica Wanjiku Jesse (the interested party) got a portion of five acres by way of transfer of L.R No. Laikipia/Nyahururu 1324 and 1325 respectively. The applicant further stated that the Tribunals failed to give regard to the fact that LR No. Laikipia/Nyahururu/1324 was registered in the name of Esther Wangui Nganga who was by then deceased while LR No. Laikipia/Nyahururu/1325 was registered in the name of Monica Njeri Kimani who was not a party to the proceedings. She therefore stated that the Tribunals acted against the provisions of the law of Succession Act Cap 160 Laws of Kenya. Mr. Chege for the applicant submitted that the Tribunals made orders against persons who were not parties to the dispute and that the orders amounted to rectification of the titles which was contrary to the provisions of section 143 of the Registered Land Act as only the High Court could do so. He told the court that following the judgment, the interested party went and registered in her name the two portions of land as awarded to her. Counsel further submitted that the Tribunals had no jurisdiction to deal with issues of ownership of registered parcels of land and he sought to rely on MBOGO MWATHI VS JOHN CHEGE MBOGO HCCC No. 531 of 2000 (unreported).

Mr. Ogola for the interested party submitted that the order for certiorari could not issue because the decision that was sought to be quashed was made more than six months before the application for leave was filed. He stated that according to the verifying affidavit of the applicant, the ruling of Nyahururu Division Land Disputes Tribunal was signed was signed on 27.4.2000 in the presence of all the parties and the decision of the Rift Valley Provincial Land disputes Tribunal was delivered on 14th March, 2002 again in the presence of all the parties. According to Mr. Ogola, even if the order of adoption of the awards by the Chief Magistrate's court was quashed, the awards will not have been quashed.

He further submitted that under the Land Disputes Tribunal, if a party to a dispute was not satisfied with an award he was supposed to appeal to this court within 60 days from the date of the decision complained of which the applicant did not do. He also submitted that the Tribunals had jurisdiction to deal with disputes relating to registered land. He further submitted that the applicant participated fully in the proceedings before the Tribunals and also driving the hearing of the appeal and so she was stopped from saying that the Tribunal was not properly constituted and that it did not have jurisdiction.

Mr. Ogola further submitted that the interested party was served with this application before she proceeded to obtain the titles in question and further, that there was no prayer in the application for cancellation of the titles and so the court could not grant that which had not been prayed for.

Having summarized the main arguments that were raised by the parties and their respective advocates, my views on the various issues that were raised by the parties herein are as follows: Section 3(1) of the Land Tribunal Act states that the jurisdiction of the Land Disputes Tribunal shall be limited to all cases of a civil nature involving disputes as to:-

- (a) the division, 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. Section 2 of the Act defines “land” to mean “agricultural land” as defined in section 2 of the Land Control Act, whether or not registered under the Registered Land Act.”

This in effect means that even with regard to registered land under the Registered Land, the tribunal has jurisdiction to deal with a dispute involving one of the three aspects as stipulated under section 3(1) as above. It is however clear that such tribunals have not been given mandate to determine disputes involving ownership of registered land. The Nyahururu Land Disputes Tribunal clearly exceeded its jurisdiction by awarding the respondent five acres constituting LR Laikipia/Nyahururu/1324 and 1325. The Rift Valley Land Disputes Appeals Tribunal also fell into the error by confirming the award of the Nyahururu Land Disputes Tribunal. And in any event, LR No. Laikipia/Nyahururu/1324 was registered in the name of a deceased person and L.R No. Laikipia/Nyahururu/1325 was registered in the name of Monica Njeri who was not a party to the proceedings. The fact that the interested party went and registered in her name the two portions of land wrongfully awarded to her was of no legal consequence because the award was null and void ab initio for want of jurisdiction. It is trite law that parties cannot by their consent or conduct confer jurisdiction upon a Tribunal if no statute grants such jurisdiction. It matters not whether the applicant participated fully in the proceedings before the said tribunals, the fact remains that such proceedings were conducted by bodies which had no jurisdiction.

Mr. Ogola’s submission that the order of certiorari cannot issue because the decision that was sought to be quashed was made more than six months before the application for leave was filed is unsustainable. This is because during the pendency of the appeal time was not running. In any event, Section 7 of the Land Disputes Tribunal Act requires that a decision of a Tribunal be filed in the Magistrate’s Court so that the court can enter judgment in accordance with the decision of the Tribunal. Thereafter a decree is issued.

The judgment was read by the Senior Resident Magistrate on 10th August, 2004 and the decree seems to have been issued on 7th September, 2004. The application for leave was filed on 8th February, 2005 before expiry of 6 months. The decisions of the tribunals could not be effective or implemented before they were adopted by the court. For reasons as aforesaid I grant the orders as sought in the said application. However, with regard to any titles that may have been issued pursuant to the decision of the Nyahururu Division Land Disputes Tribunal and the Rift Valley Provincial Land Disputes Appeals Tribunal, I cannot make any orders to annul them because that is not an issue which can be dealt with in a judicial review application. Judicial review proceedings cannot be used to determine issues of ownership. That kind of dispute can only be handled by a civil court.

The applicant will have the costs of the application.

DATED, SIGNED AND DELVIERED at Nakuru this 9th day of December, 2005.

D. MUSINGA

JUDGE

9/12/2005

Ruling delivered in open court in the presence of Mr. Kisila holding brief for Mr. Ogola for the respondent and N/A for the applicant.

D. MUSINGA

JUDGE

9/12/2005