



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APPLICATION NO. 1310 OF 2002

E.M' MUTHURI KAMERU M' NJOGU APPLICANT

VERSUS

MERU CENTRAL DISTRICT LAND

LAND DISPUTE TRIBUNAL & ANOTHER RESPONDENT

R U L I N G

The Notice of Motion dated 21st November 2002 seeks order of certiorari to issue quashing the proceedings, decision and award by the Meru Central District Land Dispute Tribunal in Land Disputes Tribunal Case No. 30 of 2002. The award in dispute was registered in Chief Magistrate's Court at Meru on 18th October 2002 and was read by Senior Principal Magistrate, Mr. Njeru Ithinga on 5th November 2002.

Mr. T.K. Kariba Mbabu, the learned counsel for the subject applicant contended that the award of the Land Dispute Tribunal is ultravires, null and void and amenable to the issuance of the order of certiorari as prayed. His contentions were very specific and clear.

The subject applicant is registered as proprietor of land bearing Title No. Nyaki/Murathankari/278 (referred to as "The suitland"). The said land is subdivided. The respondent's claim is that the suit land was registered in their brother's name during demarcation and the subject applicant fraudulently changed the same to his name. A letter dated 31st May 2002 (Arm. EMKM |2) specifies the dispute in question. The respondent objected to the jurisdiction of the Tribunal to hear and determine the dispute because of clear provisions of Section 3 of the Land Disputes Tribunals Act No. 18 of 1990. The Tribunal still went ahead to hear the dispute and made an award. The award is very short and it shall be appertune to quote the same. "Since E.M'Muthuri Kameru M'Njogu refused the hearing of the case and it was heard in his absence. He knows where land of Josua M'Mukindia is (Joseph Kithinji's father). Let him give Joseph Kithinji 5/8194 hectares which was his father's land".

No deliberation on the issue of fraud was made by the tribunal.

Paragraph 4 of the replying affidavit sworn by the 2nd Respondent avers that the subject – applicant impersonated as his brother and collected the Title and that thereafter he fraudulently got the title changed in his name. He just thereafter relies solely on the award of the tribunal and claims its enforcement. Mr. Murabe the learned counsel appearing for the Respondents also contended that as the Order of the Tribunal is not annexed to the Application, the same is incompetent, improper and liable to be struck out. He relied on the provisions of Order XLIV of Civil Procedure Rules.

It is now a trite law that order of certiorari will issue against a tribunal of judicial or quasi-judicial nature to quash a determination, proceedings, order etc. for excess or lack of jurisdiction, error of law on the face of the record, breach of rules of natural justice etc. to mention a few.

Section 3 of the Land Disputes Tribunal Act stipulates the limitation of the jurisdiction of the Tribunal. It provides "Sec. 3(1). Subject to this Act, all cases of a civil nature 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 on land; or
- (c) trespass to land shall be heard and determined by a Tribunal established under Section 4."

Thus, the jurisdiction of the Tribunal is, under no unclear terms, specified by the Act.

The Registered Lands Act (cap 300) also stipulates that the title issued in respect of a piece of land is prima facie evidence of its ownership and that any proceedings relating to the title etc. be determined by the High Court unless its value is less than specified amount therein or unless the disputes come within the provisions of Section 3(1) of the Land Tribunals Act.

The issue of jurisdiction of the Tribunal was brought to its attention by the subject- applicant. Despite that the Tribunal went ahead by hearing the matter and declaring who is the owner of the suit land.

This action obviously is ultra vires. The power of the Tribunal vested under the Act. The decision of the Tribunal was over the dispute of the ownership of the land on allegation of impersonation and fraud. The dispute was apparently and indisputably outside the jurisdiction of the Tribunal. The proceedings before and the award of the Tribunal are thus null and void. Nothing further can stand on a matter which is a nullity. I need not state that the Tribunal is a quasi-judicial body and the proceedings taken and award issued by it being a nullity is amenable to the issuance of orders of certiorari. The award has affected the right of the subject-applicant and ought to be quashed.

Order LIII confers a very special jurisdiction on the High Court to issue orders of mandamus, prohibition and certiorari on inferior Tribunals and administrative officers under specified circumstance.

Without much ado I rule that the subject-applicant is properly before this court and has satisfied me that he is entitled to the grant of his prayers.

I therefore direct that order of certiorari be issued and the proceedings before and award of Meru District Land Tribunal and the Chief Magistrate's Court in Land Disputes Tribunal Case No. 30 of 2002 be brought before this court and be quashed.

The respondents shall pay the costs of the subject-applicant of these proceedings.

Dated and delivered at Nairobi this 30th day of January, 2003.

K.H. RAWAL

JUDGE