



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW NO. 85 OF 2011

IN THE MATTER OF AN APPLICATION BY RUFUS M'NAIVASHA M'MIRITI FOR AN ORDER OF CERTIORARI

AND

**IN THE MATTER OF THE CHAIRMAN MUTHAMBI DIVISIONAL LAND DISPUTES TRIBUNAL CASE NO. 1 OF 2011
OVER LAND PARCEL NO. MUTHAMBI/KANDUGU/308**

BETWEEN

THE REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN MUTHAMBI DIVISIONAL

LAND DISPUTES TRIBUNAL.....RESPONDENT

JULIUS MIRITI SEBASTIANO.....INTERESTED PARTY

JUDGMENT

1. Vide the substantive Notice of Motion filed on 28.11.2011, the Ex-parte applicant is seeking for orders that:

(i) This honourable court be pleased to issue a prerogative order of certiorari to quash and prevent the respondent and interested party from implementing the decision made in Muthambi Divisional Land Disputes Tribunal No. 1 of 2011 now in Chuka PMCC LDT No. 44 of 2011.

(ii) That the proceedings of the said land disputes tribunal and award in LDT No. 1 of 2011 now Chuka PMCC LDT No. 44 of 2011 be declared as null and void ab-initio and the same be cancelled.

(iii) That the costs of this application be provided for and the same be paid by the respondent and the interested party.

2. Applicant avers that he is the registered owner of the parcel of land LR. No. Muthambi/Kandugu/308. He avers that the aforementioned tribunal awarded the interested party 0.5 acres out of his land which decision was illegal null and void. He avers that the respondent acted ultra vires of section 3 of the land dispute tribunal act no. 18 of 1990.

3. In support of his case, the exparte applicant availed to this court the proceedings in Chuka PMC LDT No. 44 of 2011 where the award was read, a green card in respect of the suit land and the proceedings and decision in LDT case No. 1/11 Muthambi division land dispute tribunal case.

4. The Interested Party and the Respondent took long to respond to the claim, prompting this court to give directions on 10.11.2016, whereby the interested party and the respondent were given 60 days to file their responses. The interested party did file a response though it was filed on 8.3.2017 (beyond the 60 days given).

5. The interested party has given an account of how he is claiming the suit land. He avers that he purchased L.R No. Muthambi/Kandugu/1496 measuring 0.50 acres from Linus Ndubi M'Ribu a son of M'Ribu Mbuna ;See annexure JMSI which is a copy of the agreement for sale of land.

6. That prior to the purchase, the interested party had conducted all due diligence to establish the root of the subject title where he had found

out that M'Ribu Mbuna the father to Linus Ndubi M'Ribu had obtained 0.50 acres from L.R No. Muthambi/Kandugu/308 vide objection proceedings No. 213 within U. Kandugu adjudication section and no appeal was filed; The 0.50 acres was actually excised from L.R No. Muthambi/Kandugu/308 and the same was registered as L.R No. Muthambi/Kandugu/1496 in the name of M'Ribu Mbuna and after purchasing the same an amendment was effected to reflect the same.

7. The interested party further contended that Linus Ndubi M'Ribu had been in occupation of the subject parcel of land and after purchasing the same the Interested Party took immediate possession.

8. The dispute in Muthambi Division LDT No. 1 of 2011 came to be because the land's office did not effect subsequent changes to show that the Interested Party was the new and current owner of L.R No. Muthambi/Kandugu/1496. The interested party therefore avers that he is the purchaser for value of L.R No. Muthambi/Kandugu/1496 to whom good title passed. He further states that the Muthambi Division Tribunal LDT no. 1 of 2011 had the requisite jurisdiction and therefore properly adjudicated over the issues before it.

9. In support of his case the interested party has availed the land sale agreement, proceedings in objection case no. 213 of 1995 and adjudication registration document.

10. The respondent did not file any response nor submissions, despite their undertakings to do so. I note that on 7.3.2019, the court gave directions for the suit to be heard by way of written submissions. Only the exparte applicant complied.

11. In determining the dispute herein, I have considered the arguments raised by the exparte applicant and the interested party as well as the submissions of the Ex-parte applicant. The question for determination is whether the Muthambi land dispute tribunal had jurisdiction to deal with the matter.

12. There is no doubts that the exparte applicant is the registered owner of land parcel no. Muthambi/Kandugu/308 as is evident from the green card availed by the Ex-parte Applicant.

13. Section 3 (1) of the now repealed land dispute tribunal act provided that:

“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”.

14. The final orders issued in the Muthambi division land dispute tribunal case no. 1 of 2011 was that:

“This court orders the district land registry to register the above said piece of land No. Muthambi/Kandugu/1496 under Julius Miriti/Sabastiano as it appears in the land office records for the district land surveyor did his work”.

15. The said orders had the effect of hiving 0.50 points from the land parcel no. 308.

16. In the case of **ELC JR No. 37 of 2017 Kisumu Jackson Omondi Oyoo (personal representative of the estate of Jane Aoko Oyoo – Deceased) Exparte applicant vs Wellington Wasonga – Interested party and Provincial land appeals committee (1st respondent) and principal magistrate Siaya (2nd respondent)**, the court was dealing with a case where the land dispute tribunal had ordered for excision of 1.36 hectares from the suit land. The court held that:

“The land dispute tribunal award in case no. 8 of 2004 having been found to be beyond and in excess of the tribunals jurisdiction cannot also be allowed to stand.....”.

17. Likewise in **Republic vs Kajiando North District Ngong Land Dispute Tribunal and SRM Kajiado (2014) eKLR**, it was held that:

“If the said tribunal had no jurisdiction to entertain the matter, whatever proceedings flawed from its decision would be null and void since the decision made by a tribunal which has no jurisdiction to entertain the dispute before it must of necessity be null and void”.

18. In light of the foregoing analysis, I hold the view that the cases cited by the Exparte Applicant are relevant to this matter. I also find that the exparte applicant has established a legal basis to warrant the issuance of the orders sought for as the tribunal had no jurisdiction to grant orders in excess of their jurisdiction.

19. Final orders are as given as follows:

(1) An order of certiorari is hereby issued to quash and prevent the respondent and interested party from implementing the decision made in Muthambi Divisional Land Disputes Tribunal No. 1 of 2011 now in Chuka PMCC LDT No. 44 of 2011.

(2) The proceedings of the land disputes tribunal and award in LDT No. 1 of 2011 and in Chuka PMCC LDT No. 44 of 2011 are hereby declared as null and void ab-initio and the same are cancelled.

(3) Each party to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 10TH DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Kiogora A. for Exparte Applicant

HON. LUCY. N. MBUGUA

ELC JUDGE