



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KERICHO

JUDICIAL REVIEW APPLICATION NO. 23 OF 2011

PHILIP KIRUI KORIR.....1ST APPLICANT

DAVID LANGAT BARCHOK.....2ND APPLICANT

WILSON KIPKORIR BARCHOK.....3RD APPLICANT

-VERSUS-

THE CHAIRMAN BURETI LAND DISPUTE TRIBUNAL...1ST RESPONDENT

THE PRINCIPAL MAGISTRATE COURT SOTIK.....2ND RESPONDENT

LUDIA MATUI.....3RD RESPONDENT

WILSON LANGAT.....4TH RESPONDENT

RULING

Introduction

1. This matter was filed in court on 24/6/2011 by the exparte Applicants – PHILIP KIRUI KORIR, DAVID LANGAT BARCHOK and WILSON KIPKORIR BARCHOK. These three are shown in the application as 1st, 2nd and 3rd subjects. Those sued are CHAIRMAN, BURETI LAND DISPUTES TRIBUNAL(1st Respondent), PRINCIPAL MAGISTRATES COURT, SOTIK, (2nd Respondent) LUDIA MATUI (3rd Respondent) and WILSON LANGAT (4th Respondent). Ideally, LUDIA MATUI and WILSON LANGAT should be interested parties while CHAIRMAN, BURETI LAND DISPUTES TRIBUNAL and THE PRINCIPAL MAGISTRATE’S COURT, SOTIK should be the only Respondents.

2. The application is brought under Order 53 Rule 1(2) and 3(1) of Civil Procedure Rules, Section 3A of Civil Procedure Act(cap 21) and all other enabling law. The dispute revolves around Land Parcels KERICHO/KAITET/213,237 and 238. At the centre of the dispute is a decision made by 1st Respondent and adopted by the 2nd Respondent. It is apparent that the parties had disputed at various fora before filing this matter. The matter before court is essentially about the nature of the decision, with the exparte applicants alleging that it was about ownership of the land parcels aforementioned, while the interested parties aver that it was all about boundaries. At least this is what one gets from the substance of the application and the responses made.

Decision being challenged

3. It is necessary to have a look at, and appreciate, the decision of the 1st Respondent. The decision was as follows:

“We the elders of tribunal hereby uphold the ruling of 17/07/2003 by the registrar which was not contested. The survey records be adjusted to reflect the ruling and the deliberation of the registrar’s meeting. This will clearly show that WILSON LANGAT AND LUDIA MATUI take over the boundary across the road and administer on behalf of the beneficiaries namely, family and buyers alike”.

Some History and Background

4. As the decision of the 1st respondent essentially upholds an earlier decision of the Land Registrar, it is also necessary to have a look at the registrar's decision. It was as follows:

“From the foregoing, it is evidently clear that the shifting of boundaries to go across the 40 metre road of access was carried out by Mr. Wamalwa, the then settlement officer following an objection received from Mr. Langat.

The settlement officer had also carried out some adjustments in other parcels so as to narrow the deficiencies the same way he had on the disputed parcels.

The complainant in turn failed to appeal in writing against the determination to the minister if indeed he was aggrieved by the determination of an objection that was lodged by Mr. Langat resulting in shifting of boundaries.

The complainants also failed to appreciate the fact that when they were allocated 16.5 acres, the issue of public utilities had not been taken into consideration of which each of the allottees must donate from his or her own shares.

Accordingly, the dispute against the defendants is hereby dismissed. Each party to bear its own costs.

Any aggrieved party to this decision reached thereof has a right of appeal to the High Court within 30 days from the date hereof.

Dated 17th July, 2003

J. Andrew Soi

District Land Registrar.

KERICHO/BURETI DISTRICTS”

5. Before arriving at the aforesaid decision, the Land Registrar's office had understood and delineated the issue for determination as follows:

“To determine whether the boundaries of parcels KERICHO/KAITET/237 and 238 were shifted onto parcel KERICHO/KAITET/213

And whether shifting of the same was done according to procedure within the law.”

6. It is this same decision that the 2nd Respondent later on adopted as its own.

Submissions

7. According to the ex parte Applicants, the decision was about ownership of the land parcels involved and under the applicable law, the 1st respondent was not mandated to make decisions regarding ownership. At least this is what one gathers from the ex parte Applicants' written submissions filed here on 27/11/2019. In the said submissions, it was pointed out that the jurisdiction of the 1st Respondent was spelt out in Section 3(1) of the now repealed Land Disputes tribunals Act (cap 303A) as follows:

Section 3(1)

“Subject to the 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 work or occupy land;
- c. Trespass to land shall be heard and determined by a tribunal established under Section 4.”

8. The ex parte Applicants were unequivocal as to the nature of the decision made. It was about ownership, they submitted. Their submissions put it thus:

“....., it therefore follows that the decision by the Bureti Land Dispute Land tribunal purporting to determine ownership and title of KERICHO/KAITET/237 in total disregard to its limits of jurisdiction in law, were mere nullities and must be taken as such. The adoption of the said decision of the tribunal by the Principal Magistrate court did not lend it legitimacy. They remain equally null and void.....”

The court was ultimately asked to grant the prayers sought.

9. The interested parties on the other hand were clear that the decision being challenged was about boundaries, not ownership. The decision of the 1st Respondent was said to be that of the area Land Registrar earlier made concerning adjustment or rectification of boundaries. All this is clear from the interested parties' submissions filed on 5/12/2019, which, like those of exparte applicants, also set out in detail the jurisdiction of the 1st Respondent at the time.

10. The submissions of both learned Counsels on record are more detailed than I have set out here. It is clear that each was going for an overkill, or for the jugular vein of the other, if you will. But it is not necessary to delve into the details in my view, the matter being very simple if one can properly appreciate the nature of the decision that was made. That is in fact why I endeavoured to set out the details of the decision earlier. I need to point out however that each side was correct in its exposition of the law in light of what each appreciated to be the factual nature of the decision that was made. And the nature was ownership or title according to Exparte Applicants or boundary according to the interested parties.

Analysis

11. The starting point for me is to try and appreciate the factual nature of the decision that was made by the 1st Respondent and subsequently adopted by the 2nd Respondent as its own. I set out the decision of the 1st Respondent at paragraph 3 of the judgement. It is clear that that decision itself made reference to yet another decision made by the area Land Registrar earlier. I set out the decision of the Land Registrar at paragraph 4 of the Judgment. The 1st Respondent did not make a decision different from the one made by the Land Registrar. It instead adopted that decision and recommended resultant action based on that decision.

12. Before the Land Registrar made his decision, he had pointed out the issue before him for determination. I set out that issue at paragraph 5 of the judgement.. It is clear to me that the issue before the land Registrar was one of boundaries and one would have to completely twist the plain meaning of the issue in order to arrive at a different position. I reiterate that it is clear to me that the issue was not about ownership; it was not also about title. It was simply about boundary.

13. And when the Registrar delivered the decision, it is clear he addressed the issue of boundary and agreed with an exercise carried out by one Wamalwa which involved adjustment of boundaries not only regarding the parcels of land in this matter but to others in the neighbourhood as well. It is clear that adjustments were made in order to create space for public amenities that had not been catered for earlier.

14. I really do not understand how the issue of ownership or title arises in this matter. Nobody has alleged that the interested parties are not owners of the parcels of land registered in their names. If the adjustment of boundaries led to shifting from the previous position to another, that does not mean that a decision on ownership or title was made.

Ordinarily boundary fixing or rectification leads to such change of position and the size of land may expand or contract a little depending on the circumstances. Usually, it is contraction that gives rise to disputes. It is plain to me that that is what happened in this matter. The party whose land contracts usually feels shortchanged. They usually don't take it lying down and the Exparte Applicants herein are no exception.

15. My position is therefore clear: the decision made related to boundary, not ownership or title. That decision therefore was perfectly within the mandate granted to the Land Dispute Tribunal under Section 3(1)(a) of the Land Disputes Tribunals Act(cap 302A). It follows also that the legal position is as explicated by counsel for the interested parties in his submissions.

16. Additionally, I would like to observe that it is the exparte Applicant's side that had complained before the Land Registrar. They lost the dispute there and they were given a time frame within which they could lodge an appeal. Apparently, they didn't appeal; they went to rest. Many years later, they were at it again. This time they dragged the interested parties before the local Land Disputes Tribunal. Even there however, they lost. It is important to appreciate that even as the Exparte Applicants complain that the tribunal had no jurisdiction, it is them, not the interested parties, who took the matter there. And they did so knowing well that the Land Registrar had pointed out to them the place where they could lodge their appeal. It seems to me a blot on the Exparte Applicants honesty that they can file a dispute at a forum hoping to win and when they lose, they turn around to complain against it and the very people they had dragged there. When all is said and done, the buck stops with the Exparte Applicants. They are the ones who have been initiating the disputes; it is not the other way round.

Decision

17. In this matter itself, it is again the Exparte Applicants who have complained against the interested parties. It is clear to me that their application is premised on distorted or false fact. It is an application that rests on quicksand. It is inevitable therefore that this matter must be yet another loss for them. They have not proved their case and it is therefore for dismissal. I therefore, dismiss it with costs

Dated and signed at Kericho this 10th day of March, 2020

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A.K.KANIARU

JUDGE