



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

JUDICIAL REVIEW NO. 15 OF 2011

NJOKI KINYUA.....APPLICANT

MATHIRA EAST LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE KARATINA PRINCIPAL MAGISTRATE'S COURT.....2ND RESPONDENT

VERSUS

MERCY NYAGUTHII &

NANCY WAIRIMU MACHARIA.....INTERESTED PARTIES

JUDGMENT

On 24.3.2011, Njoki Kinyua came to this court for leave to commence an application for an order of Certiorari quashing the decision of Mathira East Land Dispute Tribunals and an order of Prohibition against the Principal Magistrate's Court and any other subordinate court from dealing with L.R. No. KONYU/GACHUKU/187.

The application for leave was granted as prayed by the Learned Judge on 29th March 2011. The Notice of Motion was filed on 18.4.2011 within the time provided for by the Civil Procedure Rules 2010.

In the said notice of Motion the Ex-parte Applicants prayed for the reliefs of **Certiorari**, quashing the decision of the Mathira East District Land Disputes Tribunal in respect of KONYU/GACHUKU/187 and **Prohibition**, against the Tribunal and the Principal Magistrate's Court.

The reliefs are clearly pleaded in the statement to be based on the following grounds namely:-

(a) The Land Disputes Tribunal has no jurisdiction under the relevant Law to determine any question pertaining to title and/or Trust and consequently any proceedings before the Tribunal are illegal null and void.

(b) That even if the Land Disputes Tribunal had jurisdiction to deal with the above issues (which is denied) the proceedings before the Tribunal were irreparably flawed in the following respects:

- i. The Applicant was never served with any statement of claim notwithstanding the clear provisions of the relevant law pertaining to service.***
- ii. By reason of the non-service of the statement of claim the hearing before the Tribunal was against the principles of Natural justice.***
- iii. That the Tribunal negated the principles of fair play in refusing to accord the Applicant an***

opportunity to file her statement of defence.

I have considered the facts on record and the submissions by counsel for the exparte applicant and the Interested Party. The respondents did not file any response.

Mr. Muthigani submitted and rightly so, that the land Disputes Tribunal as it then was had no jurisdiction to determine the issue as the title to land.

Mr. Makori submitted that the issue before the Tribunal was trust and therefore the said Tribunal land jurisdiction to entertain the claim.

Section 3 of the Land Disputes Tribunal Act (repealed) that gave jurisdiction to the Land Disputes Tribunal provided that every ***dispute as to the division of, or the determination of boundaries to land, including land held in common; a claim to occupy or work land; or trespass to land, was to be heard and determined by a Tribunal established under section 4.***

This court finds that the intention of the legislative is clearly construed in Section 3 of Land Disputes Tribunal Act No. 18 of 1990 to be that the Tribunals had jurisdiction to deal with disputes relating to trespass, boundary, and right to work on an occupy land. The Tribunal had no power to order either subdivision of land and/or registration of land in the name of an individual.

In Jotham Amunavi v The Chairman Sabatia Land Disputes Tribunal & Enos Kenyani Amunavi Civil Appeal no 256 of 2002

(Unreported), the Court of appeal observed that the implementation of the decision of the Tribunal would require a subdivision of the suit land, and thus would fall outside the purview of section 3(1) of the Act. The Tribunal therefore having taken note of the proceedings of court in DMCC need not have made any direction.

The Mathira East Land Disputes Tribunal appeared to do so when in its decision made on 25.1.2011 ordered that Land Registration No. Konyu/Gachuku/187 be subdivided into the equal portions, one for Kinyua Kibui's family and the other be Nyawira's family despite the fact that the parcel of land was registered in the name of the expartes applicant Njoki Kinyua.

I hold that the decision of Mathira East Land Disputes Tribunal made on 25.1.2011 was *ultra vires* the Land Disputes Tribunal Act No. 18 of 1990. The same is hereby called to the court and is quashed forthwith. The judgment and all consequential orders made in Karatina Principal Magistrate's Land Case No. 2 of 2011 are also quashed forthwith. Costs to the exparte Applicant to be paid by the respondents.

DATED AND SIGNED AT ELDORET THIS 29TH DAY OF JUNE, 2015.

ANTONY OMBWAYO

JUDGE

DELIVERED AND SIGNED AT NYERI THIS 8TH DAY OF JULY, 2015.

LUCY WAITHAKA

JUDGE