



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

J.R. MISC. CIVIL APPL. NO. 76 OF 2009

IN THE MATTER OF THE BAHATI LAND DISPUTES TRIBUNAL NO. 90 OF 2007

AND

**IN THE MATTER OF THE NAKURU CHIEF MAGISTRATE CIVIL SUIT LAND DISPUTE NO
8 OF 2009**

AND

**IN THE MATTER OF SECTIONS 3 (1) (a), (b), (c) AND SECTION 13 OF THE LAND DISPUTES
TRIBUNAL ACT (NO.18 OF 1990) AND SECTION 3(1) OF THE LAW OF SUCCESSION ACT
AND SECTION 7 OF THE LIMITATION OF ACTIONS ACT AND SECTION 6(1) (a) AND 2 OF
THE LAND CONTROL ACT**

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN, THE BAHATI LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE CHIEF MAGISTRATE, NAKURU LAW COURTS.....2ND RESPONDENT

AND

LUCY WAIRIMU MANYANGA.....INTERESTED PARTY

***Ex-Parte* ALEXANDER MACHARIA MUTUA**

JUDGMENT

1. The ex-parte applicant under an amended Notice of Motion dated **6th June, 2011** filed under **Order LIII Rule 3** of the old **Civil Procedure Rules** seeks that this Honourable court be pleased to issue an Order of Certiorari to quash the 2nd Respondent's order dated **27th March, 2009** in **Nakuru CMCC Land Dispute No 8 of 2009** pursuant to the 1st Respondent's award in **Bahati Land Disputes Tribunal No 90 of 2007** dated **25th April, 2008**. He also seeks a prohibition order prohibiting the 2nd respondent from effecting the said award and order, as well as costs of the application.
2. The application was filed pursuant to leave granted on **25th June, 2009** and was supported by a

Statutory Statement dated **6th June, 2011** and a verifying affidavit sworn by **Mutua Munyaga (deceased)** on **24th June, 2009**. He had deponed that the interested party had referred this dispute to the Bahati Lands Dispute's Tribunal in reference to two parcels of land: **Bahati/Bahati Block 1/136** and **Loc. 14/Kiru/187 in Murang'a** and that the tribunal had found in her favour. Unhappy with the award which was adopted as Judgment of the court, he filed this motion challenging the award on the ground that the land in Murang'a was registered in the name of a deceased person, **Grace Nyambura**; that the interested party herein had no letters of administration and was not a legal representative of the estate of Grace Nyambura; that the matter was also time barred as the deceased Grace Nyambura and the applicant had been registered as owners in 1978 and Grace Nyambura died in 1985.

3. He further deponed that the 1st respondent had no jurisdiction to decide on matters of ownership of land and therefore the award of the 1st respondent being a nullity meant that no proper judgment could be entered.
4. The Interested Party opposed the application via Grounds of Opposition dated **4th December, 2009** that the application was incompetent and an abuse of the court process for failing to cite the proper law empowering the court to act and that it should be dismissed with costs.
5. On **1st February, 2011** an application to substitute the *ex parte* applicant who had passed on was filed. The application was allowed by consent on **6th June, 2011** and his son **Alexander Macharia Mutua** was substituted in his place.
6. On **18th June, 2014** when the application came up for hearing, the State Counsel representing the 1st and 2nd Respondents intimated to the court that the respondents would not be opposing the application and the prayers could be granted as sought. Counsel for the *ex parte* applicant reiterated the position in the motion, the statement and verifying affidavit. Counsel for the interested party did attend court although they were duly served with a hearing notice on **11th April, 2014**.
7. The remedy of judicial review is concerned not with the private rights or merits of the decision being challenged but with the decision making process. Its purposes is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See **Republic vs Secretary of State for Education and Science (Ex parte) Avon County Council (1991) I ALL ER 282 at 285**. The point is more succinctly made in the English case of **Chief Constable of North Wales Police Vs Evan (1982) I W.L.R 1155**, by Lord Hailsham of St Marlebone. Thus:

“the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court”

8. Therefore, a decision of an inferior court or public authority may be quashed (*by an order of certiorari made on application of Judicial review*) where the court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where these rules are applicable, or where there is an error of law on the face of the record or the decision is unreasonable in the Wednesbury sense (as was decided in **Associated Provincial Picture Houses Ltd v. Wednesbury Corporation (1948) 1 K.B 223**)
9. **Section 3 (1) of the Land Disputes Tribunals Act (repealed)** sets out the jurisdiction of the Land Dispute Tribunals as :

"(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....."

10. The Bahati Lands Dispute's Tribunal in their award decided as follows;

“1. ...The land reference Bahati/ Bahati Block 1/ 396 Belongs to Mutua Munyanga according to the agreement which was made mutually by his late brother Kamanda Manyanga.

2. The land in Muranga be left to Lucy Wairimu's Kamanda's children as per agreement.”

11.This decision clearly speaks for itself. The tribunal in hearing the dispute, determined an issue of contract and ownership of land therefore acting outside the jurisdiction conferred by the Act. The tribunal had no jurisdiction to order for specific performance of a contract to land pursuant to an agreement entered into between the two brothers. This order is *ultravires*, and/or against the rules of natural justice and this court has no option but to quash the decision. See **Kenya National Examination Council vs Republic Exparte Geoffrey Gathenji Njoroge and others.** Accordingly, the decision of the Bahati Land Disputes Tribunal in respect of **Bahati/Bahati Block 1/396** and the land in Muranga is hereby quashed by an order of *certiorari* together with the order of the Chief Magistrate's court issued on **27th March, 2009.**

12.An order of prohibition is also issued against the respondents from effecting the said award and order.

13.Counsel for the interested party challenged this motion on the grounds that the application is incompetent and an abuse of the court process for failing to cite the proper law empowering the court to act. Although this application was filed under the old Civil Procedure Rules, citing the wrong provisions of the law is not a good enough ground to strike out an application. Furthermore **Article 159(2)(d) of the Constitution** is clear that the duty of the court is to administer justice without undue regard to procedural technicalities.

14.For the above reasons, the application is allowed. Each party to bear their own costs.

Dated, Signed and Delivered at Nakuru on this 10th day of October 2014.

L N WAITHAKA

JUDGE

In the presence of:

- Mr. Simiyu holding brief for J. K. Mbutia for Applicant.
- N/A for the Respondents.
- N/A for the Interested Party.
- Court Assistant: Emmanuel