



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC MISC. JR NO. 18 OF 2014

REPUBLIC APPLICANT

VERSUS

THE GICHUGU LAND DISPUTE TRIBUNAL1ST RESPONDENT

SAMUEL GAKONO NGARE2ND
 RESPONDENT

JANE WANGECI KIURA3RD
 RESPONDENT

AND

JACKSON NJERU MURIUKI EX-PARTE
 APPLICANT

RULING

On 24th May, 2010, the ex-parte applicant herein moved the Court vide Chamber Summons application seeking leave to apply for orders of certiorari to remove into this Court and quash the award of the Gichugu Land Dispute Tribunal with respect to its judgment regarding land parcel No. BARAGWI/GUAMA/671. It is the ex-parte applicant’s case that infact the said Tribunal had no jurisdiction to handle the dispute. Annexed to the said application was an award of the Gichugu Land Disputes Tribunal dated 5th November 2009, a copy of the Title deed in respect of land parcel No. BARAGWI/GUAMA/671 and a letter dated 8th February, 2010 forwarding the decision of the said Gichugu Land Disputes Tribunal to the Senior Resident Magistrate’s Court at Gichugu.

When the matter was placed before the Judge at Embu Wanjiru Karanja J. (as she then was), she directed that since the leave sought also refers to the orders of the Senior Resident Magistrate’s Court at Gichugu, that order ought to have been annexed to the application. The Judge then ordered that the application be mentioned before her so that the issue could be clarified. The date of the order is not very clear from the handwritten proceedings but on 27th June 2013, Ong’udi J. ordered the transfer of the case to this Court.

When the matter came up before me on 25th November, 2014, Ms Muthike informed the Court that infact the application for leave had not been canvassed yet. The Court therefore allowed her to argue the application for leave as there was no record to suggest that infact the said application had been canvassed.

I have considered the ex-parte application for leave. It seeks to quash the decision of the Gichugu Land

Disputes Tribunal on the ground that the said Tribunal had no jurisdiction to handle the dispute over the land registered as BARAGWI/GUAMA/671. Although the Notice to the Registrar also mentions that it is intended to quash the order of the Senior Resident Magistrate's Court at Gichugu, there is infact no such order. In any case, the substantive Chamber Summons only refers to the order of the Gichugu Land Disputes Tribunal.

I have considered the application and the supporting affidavit of the ex-parte applicant. What is required is really an affidavit verifying the facts to be relied upon. It is the ex-parte applicant's case that the Gichugu Land Disputes Tribunal had no jurisdiction to handle the dispute. The award itself is headed as follows:-

“GICHUGU LAND DISPUTE TRIBUNAL HEARING OF CASE NO. 25/09 OF PARCEL NGARIAMA/THIRIKWA/758”

However, in the course of its award, the Tribunal made orders touching on parcel No. BARAGWI/GUAMA/671 which it ordered transferred by the ex-parte applicant and two others into the names of one SAMUEL NGURE.

Looking at the documents herein, I am satisfied that the ex-parte applicant has established a prima facie case to warrant a grant of the orders sought in his Chamber Summons dated 24th May, 2010. I therefore allow the application and grant leave to apply for orders of certiorari as sought therein. I see no reason to order that such leave do operate as stay of any order because at this stage, there is nothing to suggest that the award of the Tribunal was subsequently made an order of any Court as no such order has been availed to this Court. The applicant shall file and serve the Notice of Motion within 21 days from the date hereof and serve the same upon the respondents and all such other persons as are affected by it within 14 days of filing.

Costs shall be in the cause.

- **B.N. OLAO**
- **JUDGE**
- **5TH DECEMBER, 2014**

5/12/2014

Before

R. Limo - Judge

Mbogo – CC

Mr. Magee for Ex-parte Applicant – present

COURT: Ruling delivered in open Court in the presence of Mr. Magee for the Ex-parte Applicant.

- **R. LIMO**
- **JUDGE**
- **5TH DECEMBER, 2014**