



REPUBLIC OF KENYA

High Court at Nyeri

Judicial Review 61 of 2011

JOHN MUTHEE KANJA.....APPLICANT

versus

DAMARIS WANJIKU KANJA.....RESPONDENT

JUDGMENT

1. By a notice of motion dated 23rd November 2012 the applicant moved court that an order of certiorari do issue to remove to the High Court and to be quashed the proceedings and award of the Mathira Land Dispute Tribunal dated 29th September 2011 in Tribunal Case No. 6 of 2011 between the applicant and the Interested party and the proceedings. Judgment and decree of the Karatina Principal Magistrates court Land case No. 16 of 2011.

2. It was grounded upon the following grounds.

a. That subject award affects title to land by proposing sub-division of the same.

b. That the award deals with an issue of trust outside the mandate and jurisdiction donated to the Tribunal under section 3(1) of Act No. 18 of 1990.

c. The award thus made without jurisdiction and is ultra-vires.

3. The application is supported by affidavit of John Muthee Kanja.

4. The first and second respondent filed grounds of opposition to the notice of motion and stated that.

1. The application is misconceived, incompetent, bad in law and fatally defective

2. The application is contrary to mandatory legal provisions.

3. The orders sought are untenable.

4. The application is an abuse of the court process.

5. The interested party on 14/12/2011 filed a replying affidavit wherein she stated that the tribunal is well vested with jurisdiction and that the affidavit in support of the application is defective as it has just on a separate page.

6. The parties herein agreed that the matter be determined by way of affidavit evidence and written submissions which have now been filed.

7. On behalf of the applicant it was submitted that the applicant is the absolute registered owner of the suit premises known as No. RUGURU/KIAMARIGA/464 the same being first registered in 1959 and title deed issued on 16/1/1978.

8. The interested party is the subjects younger sister who separated with her husband and was given a portion of the suit land to utilize and settle on awaiting any reconciliation with her husband which has not happened.

9. The interested party sought a bigger portion of the suit land on the ground that her brother was registered as a trustee for the other children to which the tribunal found that the subject was registered as a trustee and decided that the interested party be awarded 2 acres hence this notice of motion.

10. It was submitted that the tribunal acted outside its jurisdiction by dealing with an issue of trust as the same is not included in section 3(1) of Land Dispute Tribunal Act and therefore the Act and the subsequent award is a nullity.

11. On behalf of the interested party it was submitted that land dispute tribunal derives its jurisdiction from section 3(1) of the Land Disputes tribunal Act No. 18 of 1990 and also section 3 ad section 159 of the Registered Land Act Cap 300.

12. That by virtue of section 3 and section 159 of the Registered Land Act the tribunal becomes a court to hear and determine matter under Cap 300 in support thereof the same submitted the ruling in Nyeri Misc. Civil Application No. 129 of 2003.

13. It is further submitted that section 1A(1)(2)1B(1)(a) and 3 of the Civil Procedure Act gives power to the court to do substantive justice and the substantive justice in this matter is that the interested party has a share of the suit land.

14. It should be pointed out leave was given to the applicant herein on 20th December 2011.

15. From the pleadings herein and the submission the issue for determination by the court is whether the 1st Respondent had jurisdiction to determine the dispute which was placed before it.

16. To the dispute which was before the Tribunal as summarized by the same is that the interested party wanted to inherit a portion of land RUGURU/KIAMARIGA/464 and in their decision the tribunal determined that the interested party be awarded 2 acres of the suit land.

17. Under section 3(1) of the Land Disputes Tribunal the same has jurisdiction to handle the following disputes.

a. Division of or the determination of boundaries to land including land held in common.

b. A claim to occupier work land.

18. The question for determination is whether the interested parties claim before the Tribunal fell under any of the above disputes.

19. Whereas it is true that the tribunal becomes a court for the purposes of disputes under section 159 of the Registered Land Act the items interested party claim before the Tribunal was that the subject held the said land in trust and to my mind this was not an issue which fell within the jurisdiction of the tribunal and it is therefore clear that the tribunal has not been given mandate to determine dispute involving ownership of registered land.

20. It is therefore clear that since the suit land had been registered in the name of the subject under the Registered land Act and since the interested party had not moved the tribunal under the provisions of Registered Lands Act the same did not have jurisdiction in the matter placed before it.

21. Since the interested party's claim is based on trust if she wishes to challenge the validity of the title issued to the subject herein then her remedy is founded in filing a civil suit in Court of competent jurisdiction for appropriate relief and therein she will get substantive justice as submitted by her advocate.

22. It should be noted that judicial review is a special jurisdiction of the court and can not be used to confer title to any party herein.

23. By reason of the matter aforesaid I find that the application before court has merit and therefore issue an order of certiorari and quash the proceedings and award of the Mathira land Disputes Tribunal dated 29th September 2011 in Tribunal Case No. 6 of 2011 and proceedings judgment and decree of the Karatina Principal Magistrates court Land case No. 16 of 2011.

24. Each party shall meet their own costs.

Dated and delivered at Nyeri this 9th of May 2013.

J. WAKIAGA

JUDGE

Judgment is read in open court in the absence of parties and their advocates.

J. WAKIAGA

JUDGE