



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC NO. 68 OF 2012

PRISCILLA WARUI NYAGAPLAINTIFF/APPLICANT

VERSUS

OCTAVIAN KIURA KAARA1ST DEFENDANT/RESPONDENT

JOSEPH NJOKA KAARA 2ND DEFENDANT/RESPONDENT

RULING

The plaintiff/applicant filed this suit against the defendants/respondents seeking inter alia, a declaration that the proceedings and findings of the Gichugu Land Disputes Tribunal in respect of L.R No. BARAGWE/GUAMA/1279 are null and void and cannot be effected and also that the plaintiff/applicant does not hold the said land in trust for the defendants/respondents.

Simultaneously with that plaint, the plaintiff/applicant filed a Notice of Motion seeking a stay of the proceedings in Land Disputes Tribunal No. 13 of 1999 at the Kerugoya Senior Principal Magistrate's Court pending the hearing and determination of this suit. The said application is supported by the applicant's affidavit in which she depones inter alia, that the Land Disputes Tribunal has no jurisdiction over land registered under ***Cap 300 or in matters of trust.***

The application is opposed and in his replying affidavit sworn on behalf of the 1st respondent, the 2nd respondent depones that the applicant holds the land in trust for herself and the other family members and that in any event, the award of the Land Disputes Tribunal ceased to exist when it was adopted as a judgment of the Court in Kerugoya L.D.T No. 13 of 1999.

Submissions have been made by both parties and I have considered them together with the relevant affidavits and other supporting documents.

From my perusal of the proceedings before the Gichugu Land Disputes Tribunal Case No. 13 of 1999, it is clear that the dispute between the parties involves the parcel of land No. BARAGWE/GUAMA/1279 which is registered under the ***Registered Land Act*** (now repealed). This is not in dispute. The Land Dispute Tribunal in its order dated 16/2/1999 made orders that the said land be registered in the names of four persons and directed the Executive officer to sign the necessary transfer forms. This award was adopted by the Court on 28/5/1999 and when counsel for the applicant appeared before me on 14/12/2012 under certificate of urgency, she informed the Court that the Executive officer was due to sign the transfer forms on 19/12/2012 pursuant to the Land Dispute Tribunal Order.

The land subject matter of the disputes between the parties being registered land, the Land Dispute Tribunal had no jurisdiction to entertain a dispute relating to title to such land as was stated by the Court of Appeal in AMUNAVI VS THE CHAIRMAN SABATIA DIVISIONAL LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL NO. 256 OF 2002 and which has been followed by the High Court in many cases.

Having said so, I have my own mis-givings as to whether indeed the plaintiff/applicant has properly moved the Court by way of a plaint. It would appear to me that perhaps the jurisdiction of this Court ought to have been invoked by way of Judicial Review or an appeal to the Appeals Committee against the decision of the Gichugu Land Disputes Tribunal as provided for under Section 8 of the Land Dispute Tribunal Act (now repealed). That notwithstanding, it is clear to me that if the proceedings in Kerugoya SPMCC No. LDT 13 of 1999 are not stayed, an injustice will be perpetrated as the Executive officer at this Court will proceed to execute an order that is null and void as it was issued in excess of jurisdiction. Therefore, notwithstanding my mis-givings as to the manner in which this Court's jurisdiction has been invoked, I think this Court has inherent jurisdiction and a responsibility to stay a proceeding that is, on the face of it, an affront to the fair administration of justice.

In the circumstances, having found that infact the orders issued by the Gichugu Land Disputes Tribunal were issued in excess of jurisdiction and that the said orders are now about to be executed by the Subordinate Court, it is in the interest of justice that I grant the stay orders sought by the applicant herein.

Ultimately therefore, I grant the orders sought in the applicant's Notice of Motion dated 13/12/2012 with no orders as to costs.

B.N. OLAO

JUDGE

4/7/2013

4/7/2013

Before B. N. OLAO – JUDGE

CC – Muriithi

Miss Wanjiru for Plaintiff absent

Defendant present

COURT: Ruling delivered this 4th day of July 2013 in open Court.

Respondents in person present

Miss Wanjiru for applicant absent

Applicant absent.

B. N. OLAO

JUDGE

4/7/2013