



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS

IN THE MATTER OF: AN APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF: HEARING OF THE LAND DISPUTES IN RESPECT OF LAND PARCEL NO. LOC.16/NDUNYU CHEGE/212 BY GATANGA LAND DISPUTE TRIBUNAL CASE NO.8 OF 2010 AND THE CHIEF MAGISTRATE THIKA IN D.O. CASE NO.90 OF 2010

BETWEEN

REPUBLIC.....APPLICANT

-VERSUS-

GATANGA LANDS DISPUTES TRIBUNAL.....1ST RESPONDENT

CHIEF MAGISTRATE’S COURT THIKA.....2ND RESPONDENT

MBUGUA KAMAU GATIBA.....INTERESTED PARTY

EX-PARTE:..... JOSEPH NGUGI KAGUTHA

J U D G M E N T

Pursuant to leave granted on 24th February 2011, the Exparte Applicant herein filed a Notice of Motion dated 14th March 2011 seeking the following orders:

- a) THAT the Honourable Court be pleased to issue an order of Certiorari to remove into the High Court and quash the decree issued by the Thika Chief Magistrate’s Court in D.O. Case No.90 of 2010, all its consequential orders and the entire proceedings and award made by Gatanga Land Disputes Tribunal in Case No.LDT/08/2010/06 between Mbugua Kamau Gatiba and Joseph Ngugi Kagutha.
- b) THAT the Honourable Court be pleased to grant an order for prohibition directed against District Land Registrar Thika forbidding him and or any other subordinate staff to him from acting on the decree issued by Thika Chief Magistrate’s court in D.O. Case No.90 of 2010 in respect of land parcel No.LOC.16/NDUNYU-CHEGE/212.
- c) That costs for the application be provided for.

The application is supported by the statement of facts dated 23rd February 2011 and the verifying affidavit sworn by Joseph Ngugi Kagutha, the Exparte Applicant herein on 23rd February, 2011.

The Respondents, Gatanga Land Disputes Tribunal and the Chief Magistrate Thika who were

represented in these proceedings by the

Hon. Attorney General did not oppose the Applicant's motion.

However, the motion was opposed by the Interested party Mbugua Kamau Gatiba who filed grounds of opposition dated 14th November 2011. The Notice of Motion is premised on the grounds stated in the statement of facts which are the following:

- 1) The said tribunal acted without jurisdiction when it purported to effect change of title in respect of the applicant's land parcel Number Loc.16/Ndunyu-Chege/212.
- 2) The Gatanga Land Control Dispute acted *ultra vires* its powers provided under the Land Disputes Tribunal Act (Act No.18 of 1990) and more particularly Section 3 thereof.
- 3) The Chief Magistrate, Thika issued a decree on the basis of a null and void award and as such the decree is itself null and void and should therefore be quashed.
- 4) That it would be unjust if the Thika District LAND Registration were to act on the void decree.

From the pleadings herein and averments in the verifying affidavit, it is apparent that the Applicant herein and the Interested Party are brothers.

The case for the Applicant is that following resolutions passed in two family meetings on 9th December 1988 and 16th December 2008 he was registered as owner of land known as No.Loc.16/Ndunyu-Chege/212 with the full knowledge of the Interested Party. A copy of title to the said land registered in the Applicant's name is exhibited and marked JNK III – together with a Certificate of Search dated 4th November 2009.

The Interested party claiming that the Applicant had caused the registration of the said land into his own names fraudulently complained against the Applicant to the CID Thika and when no action was taken against the Applicant by the police, he instituted a claim at the Gatanga Land Disputes Tribunal claiming ownership of the said land and challenging the title registered in the Applicant's name on grounds that it had been obtained fraudulently.

The Tribunal proceeded to hear and determine the dispute on 18th October 2010. In its award, the tribunal decided that the Applicant had acquired title to that land fraudulently and that he should give 2 acres from land Ref. No. Loc.16/Ndunyu-Chege/212 to the Interested Party being his rightful share. The tribunal's award was subsequently filed in the Chief Magistrate's Court at Thika and was adopted as a judgment of the court.

A decree in terms of the award by the Land Disputes Tribunal was thereafter issued on 4th January 2011 by the Senior Principal Magistrate at the Chief Magistrate's Court at Thika. This is what triggered the instant judicial review proceedings.

From the foregoing, it is clear that the Land Disputes Tribunal (1st Respondent) adjudicated on a dispute revolving around ownership of registered land. Clearly, in view of the provisions of Section 3(1) of the Land Disputes Tribunal Act, the 1st Respondent had no jurisdiction to entertain leave alone determine such a dispute. Section 3 (1) of the Land Disputes Tribunal Act states as follows:

“Subject to this Act, all cases of civil nature involving a dispute as to-

- (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

shall be heard and determined by a Tribunal established under Section 4”

Since the tribunal had acted without jurisdiction, its award filed with the 2nd Respondent was null and void *abinitio* and the 2nd Respondent erred in adopting an illegal award as a judgment of the court. Consequently, the decree that was issued on 4th January 2011 by the 2nd Respondent had no legal effect as it was a nullity in law.

In the circumstances, this court is satisfied that the Exparte Applicant has demonstrated that he is deserving of the reliefs sought in this case.

I find merit in the Notice of Motion dated 14th March 2011 and I allow it in terms of Prayers (a) and (b) with the result that the following orders are hereby issued:

(a) An order of CERTIORARI to remove into the High Court to quash the entire proceedings and award made by the Gatanga Land Disputes Tribunal in Case No.LDT/08/20/2010/06 as well as the decree issued by the Thika Chief Magistrate’s Court in D.O. Case No.90 of 2010 and all its consequential orders.

(b) An Order of PROHIBITION prohibiting the District Land Registrar Thika or officers working under him from acting on the decree issued by the Thika Chief Magistrate’s Court in D.O. Case No.90 of 2010 in respect of Land Ref. No. LOC.16/NDUNYU-CHEGE/212.

Each party to bear its own costs.

Dated, Signed and Delivered by me at Nairobi this 2nd day of March, 2012.

C. W. GITHUA

JUDGE

In the presence of:

Florence – Court Clerk

Applicant present in person

N/A for Respondents

Interested Party present in person