



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Judicial Review 17 of 2007

REPUBLIC.....
.....APPLICANT
VERSUS

GICHUGU LAND DISPUTES TRIBUNAL1ST
RESPONDENT

SENIOR RESIDENT MAGISTRATE KERUGOYA.....2ND
RESPONDENT

LEONARD MUTHIKE NJUKI.....3RD
RESPONDENT

AND

ELIZABETH RUGURU NJAGI.....EX-PARTE
APPLICANT

RULING

This is the Notice of Motion dated 17th July, 2007. It was filed under Order 53 Rule 3 of the civil Procedure Rules (old) for the following orders:-

1. An order of certiorari to remove into the High Court and quash the award of the Gichugu Land Disputes Tribunal in Tribunal Case No. 61/2006 and the subsequent order of the Kerugoya Senior Resident Magistrate adopting the said award as Judgment of the Court made on 13/6/2007 in

Kerugoya Land Disputes Tribunal Case No. 35/2007.

2. That the Court to issue an order of prohibition restraining the 2nd Respondent from enforcing or assisting on the enforcement and/or execution of the Judgment dated 13/6/2007 in Kerugoya Land Disputes Case No. 35/2007.

The main ground is that the Tribunal acted ultra vires Section 3(1) of the Land Disputes Tribunal Act (now repealed). The Applicant filed a supporting affidavit saying she is the registered proprietor of LR. NO. NGARIAMA/NGIRIAMBUR/1851 (ER1). The 3rd Respondent filed a claim at the tribunal saying he had bought land from the Applicants' husband in 1995. The Tribunal made orders giving the 3rd Respondent one (1) acre of the land and she was given (1) to share with her children.

The 3rd Respondent filed a replying affidavit sworn on 14/12/2007. He states that the applicant and her husband breached an agreement for the 3rd Respondent to occupy LR. NO. NGARIAMA/NGIRIAMBUR/1851. The land was then transferred to the Applicant as a gift without his consent. And that the delay in filing suit was caused by the tricks of the Applicant and husband and his imprisonment for 3 years. And that the applicant did not disclose to the Court material facts to this case.

Ms. Wanjiru for the ex parte applicant submitted that:-

- ***The tribunal lacked jurisdiction to deal with issues of purchase of land.***
- ***The registered proprietor was not a party to the alleged sale agreement.***
- ***The tribunal lacked jurisdiction to determine a dispute related to registered land under the now repealed Registered Land Act.***
- ***The agreement of 1995 was time barred.***
- ***Her children were given land yet they were never parties to the dispute.***

Mr. Githinji for the 3rd Respondent submitted that:-

- ***The 2nd Respondent was never served with the Motion herein.***
- ***Order 53 Rule 3 of the Civil Procedure Rule was not complied with.***
- ***The Application was accompanied by a supporting affidavit instead of a verifying affidavit.***
- ***The dispute was over a claim to occupy land or work in the land as envisaged in Section 3 (1) of the Land Disputes Tribunal Act. Therefore the tribunal had jurisdiction to deal with title to land.***
- ***The Applicant had consented to the sale of the land to the 3rd Respondent.***

He referred to this court to ***HIGH COURT MISC. CIVIL APPLICATION NO. 129/04 NYERI – REPUBLIC VS THE CHAIRMAN LAND DISPUTES TRIBUNAL KIRINYAGA DISTRICT & ANOTHER.*** Where he says Hon. Justice Khamoni held that the Land Disputes Tribunal has jurisdiction to adjudicate in disputes over title to land.

There is on this file an affidavit of service sworn on 31/3/2007 by Wanjiru Wambugu Advocate showing that on 23/7/2007 she served all the documents herein on the Executive Officer Senior Resident Magistrate's Court Kerugoya. The Court would be expected to forward the same to the Attorney General for the necessary action. It is therefore clear that the 2nd Respondent was served.

The pertinent question here is whether the 1st Respondent had jurisdiction to determine the issues it did. The Tribunal derived its jurisdiction from Section 3(1) of the Land Disputes Act (now repealed). It provided as follows:

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

- *The division of or determination of boundaries to land including land held in common.*
- *A claim to occupy our work land.*
- *Trespass to land, shall be heard and determined by a Tribunal established under Section 4.*

From the record of what transpired at the Tribunal the 3rd Respondent herein filed a reference at the Tribunal against the Applicant and her husband on 9/11/2006. He said he was buying from them 1 ½ acres of land from Land Parcel No. NGARIAMA/NGIRIAMBU/1851. This was in 1994. They entered into a sale agreement for sale of 1 acre. It is not clear what acreage he was buying and the amount.

After listening to the parties, the Tribunal reached a decision on 6/2/2007 that the land in issue should be divided into 2 equal parts; one (1) acre was to go the 3rd Respondent and another to the Applicant and her children. They gave no reason for this decision. By the time this was happening, the land had been registered in the names of the Applicant on 22/2/94.

The issue before the tribunal was a sale agreement. Was there a valid sale agreement between the 3rd Respondent and the Applicant? Had any of the parties breached it if indeed it existed? And if it was breached, what was the remedy for the offended party?

The questions above are the ones the 1st Respondent dealt with. Did it have jurisdiction under Section 3(1) of the Act to determine issues of Contract and sale agreements? It obviously did not. It even gave orders of specific performance in its own style. If it's true the 3rd Respondent bought 1 ½ acres why did the Tribunal give him 1 acre? It is because they delved into an area of the law of contract which they did not understand and made a decision which could not be supported by evidence.

I know from the authority cited herein above that the Hon. Justice Khamoni says the Tribunal had jurisdiction to deal with title in land even if it is registered under the Registered Land Act. However, in the case of **WAMWEA VS CATHOLIC DIOCESE OF MURANGA REGISTERED TRUSTEES [2003] KLR 389** he ruled that the Land Dispute Tribunals had no jurisdiction to hear disputes over title to land, and even contracts.

The 3rd Respondent was not claiming a right to occupy or work land. He was claiming the piece of land he had bought. The Tribunal divided the land into two equal portions hence interfering with interests in registered land. There was also an issue of the Applicant and her husband having defrauded the 3rd Respondent by taking his money and have the land registered in the Applicant's name. The land Tribunal did not have jurisdiction to deal with a case of fraud.

I have also seen in this file a Plaintiff filed at Embu High Court Civil Case 16/2004. It is about the issues I have raised here. And it's between the same parties. It is not clear what happened to it. That was the best forum which could have addressed the 3rd Respondent's predicament. He however abandoned it and went to file a reference at the Tribunal.

My finding is that the 1st Respondent conferred upon itself jurisdiction which it did not have. It acted ultra vires its mandate as was provided for in Section 3(1) of the Land Disputes Act.

The award it made which was eventually adopted as a judgment of the Court are hereby recalled and quashed, by this Court. Any consequential orders are set aside. The application is therefore allowed.

Costs to the Applicant.

DELIVERED, SIGNED AND DATED AT EMBU THIS 3RD DAY OF JULY, 2012.

**H.I. ONG'UDI
JUDGE**

In the presence of:-

Mr. Njoroge for Ms. Wanjiru for Applicants

Ex parte Applicant present

3rd Respondent present

Njue CC