



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAIROBI

MILIMANI LAW COURTS

Judicial Review 90 of 2011

**IN THE MATTER OF AN APPLICATION SEEKING LEAVE TO INSTITUTE JUDICIAL
REVIEW PROCEEDINGS IN THE NATURE OF AN ORDER OF PROHIBITION**

AND

**IN THE MATTER OF THE LAND DISPUTES TRIBUNALS ACT NO.18 OF 1990 LAWS OF
KENYA**

AND

IN THE MATTER OF THE REGISTERED LAND ACT CHAPTER 300 LAWS OF KENYA

SALOME WANGUI MBUGUA.....APPLICANT

VERSUS

THE RESIDENT MAGISTRATE LIMURU.....RESPONDENT

JAMES GACHUNGA KARANJA1ST INTERESTED PARTY

SERAH WAMBUI GITAU2ND INTERESTED PARTY

JUDGEMENT

The notice of motion dated 25th October, 2011 is the subject of this decision. The same was filed in court on 31st October, 2011 by Salome Wangui Mbugua (the ex-parte applicant). The Resident Magistrate, Limuru is named as the respondent whereas James Gachunga karanja and Serah Wambui Gitau are the 1st and 2nd interested parties respectively. In the application the applicant seeks an order of prohibition stopping the respondent from adopting the award of Kiambu Land Disputes Tribunal (hereinafter simply referred to as the Tribunal) in a dispute involving the ex-parte applicant and the interested parties in respect of L.R. No. Lari/Kiambu 1589 and Lari/Kiambu 1590.

Having perused the papers filed by the parties in this case, I find it necessary to restate the facts in this

judgment. The ex-parte applicant is the registered owner of two parcels of land known as Lari/Kiambu 1589 and Lari/Kiambu 1590. Through a sale agreement dated 25th January, 2008, the ex-parte applicant agreed to sell half an acre of land from the two parcels of land to the interested parties at a price of Kshs.420,000/=. Kshs. 310,000/= was paid on the spot and the balance of kshs.110,000/= was to be paid later. Before the transaction was completed a dispute arose over the payment of the balance. I do not wish to go into the reasons for the disagreement since I am not in a position to give a solution to the parties on this issue considering that this matter has come before me by way of judicial review.

After the disagreement the interested parties filed a complaint before the Tribunal which ruled that:-

“The buyer is duly entitled to half an acre of land from the two parcels of land L.R. Kiambu/Lari/1589 and 1590 upon payment of the remaining balance of Kshs.110,000/=. The Tribunal court therefore awards that the restriction placed on the suit parcels of Land Kiambu/Lari/1589 and Kiambu/Lari/1590 be lifted forthwith. The Tribunal court also awards and orders the objector Salome Wambui Gitau to book Land Control Board and transfer the land to the claimant.

The claimant is also ordered to pay the balance of kshs.110,000 during the Land Control Board meeting.”

For clarity, the daughter of the ex-parte applicant herein had put a restriction on the parcels of land in question and that is why the Tribunal ordered the lifting of the restriction. The ex-parte applicant herein was dissatisfied with the decision of the Tribunal and filed an appeal with the Provincial Land Disputes Appeals Committee which will henceforth be referred to as the Appeals Committee. The Appeals Committee overturned the award of the Tribunal using the following words:-

“The land has a title deed and the tribunal has no power or jurisdiction in a land with a title deed.”

Even after the Appeals Committee had made its decision, the interested parties filed Land Case No. 3 of 2009 at Limuru Senior Principal Magistrate’s Court seeking to adopt the award of the Tribunal dated 30th January, 2009. This is the case which the ex-parte applicant wants this court to stop the respondent from hearing.

The ex-parte applicant’s case is that the respondent has no jurisdiction to entertain the interested parties’ case because the decision of the Tribunal which the interested parties want the respondent to adopt was overturned by the Appeals Committee and there is therefore no award to be adopted by the respondent.

The respondent did not file any response to the application. The interested parties have appealed to the heart of this court. They are asking the court to do equity in the matter. Through a replying affidavit sworn on 21st May, 2012 the 1st interested party gave a chronology of the events that have taken place and asked the court to do justice in this case by allowing the magistrate to adopt the decision of the Tribunal. It is the interested parties’ case that the ex-parte applicant is hell-bent on frustrating the sale agreement she voluntarily entered with them.

That the interested parties have a case that appeals to equity cannot be disputed. I will quote the observations of the Appeals Committee to illustrate this point:-

“We have found out that the respondent Mr. James Gachunga had bought the land legally and has promised to pay the balance of Kshs.110,000/= (one hundred and ten thousand only) even in the authorizing control board.

- **However the ½ acre should go to the land buyer Mr. James G. Karanja.**
- **In addition to that we have further discovered that the buyer has largely developed the land. For example 1. Semi-permanent building, 2. A servant quarter 3. Kitchen 4. Zero grazing cowshed 5. A bore hole of 110 ft 6. A pit latrine and bathroom 7. Fencing with chain**

link and barbed wire 8. Nappier grass and 4 pears trees.”

It is therefore clear that the interested parties have already taken possession of the land and developed it. There is also clear evidence that there is a sale agreement between the interested parties and the ex-parte applicant. The Tribunal appears to have had good reasons for deciding the matter in favour of the interested parties.

Judicial review is not about the merits of the decision which has been made by a tribunal or public body. Judicial review deals with the process of making the decision. Where a tribunal makes a decision outside its province the court will not hesitate in quashing such a decision. The jurisdiction of the defunct land disputes tribunals was found in section 3(1) of the repealed Land Disputes Tribunal Act. Land disputes tribunals had no power to hear disputes concerning title to land. The Tribunal therefore had no jurisdiction to hear the land dispute between the ex-parte applicant and the interested parties.

The Appeals Committee realized the mistake of the Tribunal and did the right thing by setting aside its award. The award of the Tribunal having been set aside, there was no award to be taken to the magistrate for adoption. If the magistrate is to adopt the award, he will be engaging in a futile exercise. The award having been set aside on appeal became a nullity. Even if it had not been set aside, the same was still a nullity in that the Tribunal had no jurisdiction to make the award.

The case before me is the kind that gives a judge nightmares. The interested parties have a genuine claim that calls for arbitration by the court. By approaching the Land Disputes Tribunal they went to the wrong forum. I have no doubt in my mind that justice will eventually be done in this matter. Mine is only limited to finding out whether the respondent is on the right course. The answer is that the respondent is not on the right course and the only solution is to prohibit the respondent from travelling in the wrong direction. As such the ex-parte applicant's notice of motion is allowed in terms of prayer No. 1.

Considering the fact that the interested parties have a genuine claim against the ex-parte applicant, I do not find this to be a case where costs should be awarded to any of the parties. I therefore make no order on costs. I hope the advocates involved in this matter will convince their clients to reach an amicable settlement of the dispute between them. This will ensure that they do not waste more time and money in the courts.

Dated and signed at Nairobi this 5th day of July, 2012

**W. K. KORIR,
JUDGE**