



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Judicial Review 81 of 2010

JOHN NJOGU NJENGA.....APPLICANT

VERSUS

THE BAHATI LAND DISPUTES TRIBUNAL.....RESPONDENT AND

HELLEN GATHONI.....1ST INTERESTED PARTY

DOROTHY NYOKABI.....2ND INTERESTED PARTY

WILSON NJENGA.....3RD INTERESTED PARTY

JUDGMENT

The applicant brought this motion against the respondent seeking orders of *certiorari* and prohibition. The Order of *certiorari* is sought to quash the decision of the respondent, Bahati Lands Disputes Tribunal, delivered on 5.05.2010 in the land dispute, Bahati Land Disputes Tribunal No. 169/2009 and subsequently adopted by the Nakuru Chief Magistrates Court in Land Dispute No. 8/2010.

The order of prohibition is sought to prohibit the interested parties, the tribunal and any other party from executing or acting upon the award of the Tribunal.

The respondent and Interested Parties did not file any reply in opposition. However the Interested Parties participated in the proceedings. The 1st, 2nd and 3rd interested parties are the children of the applicant with his first wife who is now deceased.

The Interested Parties' claim in the tribunal was for a share Bahati/Bahati/Block 1/1447 which was registered in the name of Damaris Nyokabi Nyanga, the applicant's mother and therefore a grandmother to the Interested Parties. The land was transferred into the applicant's names and he subdivided and sold part of the land. The Interested Parties' complaint was that since their mother had died, the applicant should have given them their mother's share but instead, the applicant was squandering the proceeds from the land on his 2nd wife. The Tribunal after hearing the parties held as follows:-

“...since he (the respondent) has two wives of which the elder wife passed away the tribunal request the Hon. Court to compel Mr. John Njogu (the respondent) to issue three plots of 50x100 each to the children of the late first wife. Those are:- 1. Hellen Gathoni, 2. Dorothy Nyokabi, 3. Wilson Njoro and eventually issue title deeds to them.

In their submissions in court, the Interested Parties reiterated what their concerns were at the Tribunal, that the applicant was squandering all the family land on his second wife to their detriment.

This is the decision that the applicant challenges in this judicial review application for the following grounds:-

1. **The tribunal acted ultra vires.**
2. **The proceedings before the tribunal violated the provisions of the law of Succession Act;**
3. **The tribunal had no jurisdiction to arbitrate on inheritance;**

The mandate of the Land Disputes Tribunal is spelt out under **Section 3 (1)** of the **Land Disputes Tribunal Act No. 18 of 1990**. It provides as follows:-

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

- a) **division of or the determination of boundaries to land including land held in common,**
- b) **a claim to occupy or work land,**
- c) **trespass to land shall be heard and determined by a tribunal established under section 4.**

The Tribunal was not called upon to adjudicate on issues of boundaries claim to land, or trespass to land as per its mandate under the **Act**. From the foregoing it is clear that the tribunal was not seized with jurisdiction to allow or adjudicate a claim touching on title and or ownership to land registered under the **Registered Land Act Cap 300 Laws of Kenya**. It is also clear that the tribunal does not also have powers to cause to be altered or direct the rectification of the register of land. It is therefore null and void for the tribunal to request the honorable court to compel the respondent to **“eventually issue the Title deeds to them”** (the Interest Parties).

Bahati/Bahati/Block 1/ 1447 is registered under the **Registered Land Act Cap 300 Laws of Kenya. Section 159** thereof vests jurisdiction in matters relating to land in the High Court or where the law allows, in the Magistrate’s Court. **Section 159** of the **Registered Land Act** provides as follows:-

“Civil suits and proceedings relating to title or possession of land or to the title or to a lease or charge registered under this Act or to any interest on the land, lease or charge being an interest which is registered or registerable under this Act or which is expressed by this Act not to require registration shall be tried by the High Court and where the value of the subject matter is 25,000 pounds by the Resident Magistrate Court or where the dispute come with the provisions of Section 3 (1) of the Lands Disputes Tribunal Act in accordance with that Act.”

The last question is whether the Interested Parties could inherit from the applicant in his lifetime. Unless the applicant freely gave his children land during his lifetime, they can only inherit until after his death. That is when the provisions of the **Law of Succession Act Cap 160 Laws of Kenya** comes in operation. **Section 2(1)** of that **Act** reads as follows:-

“S.2(1) Except as otherwise expressly provided in this Act or any other written law, the provisions of this Act shall constitute the law of Kenya in respect of, and shall have universal application to, all cases of intestate or testamentary succession to the estates of deceased persons dying after the commencement of this Act and to the administration of estates of those persons.”

The Tribunal had no jurisdiction to adjudicate over succession matters and in any event, a cause of action had not arisen under the Succession Act because the applicant is still alive. As much as the court may sympathise with the Interested Parties, their claim did not lie under the Land Disputes Tribunal. May be their plight may be addressed under the provisions of the new Constitution.

I am therefore of the opinion that the tribunal acted *ultra vires* its powers and did not have jurisdiction to entertain matters touching on inheritance and ownership of land. Since the decision of the Tribunal was

null and void for want of jurisdiction, it follows that what the Chief Magistrate's Court adopted too, is null and void. This court hereby calls for the decision of Bahati Lands Dispute Tribunal dated 8.06.2010 relating to Bahati/Bahati Block 1/1447 and the judgment and decree of the Chief Magistrate at Nakuru for purposes of it being quashed by an order of certiorari. Since the award and judgment of the court are quashed it will not be necessary to grant the second prayer of prohibition. As the parties to this suit are close family members, each party will bear their own costs.

DATED and DELIVERED this 5th day of October, 2012.

R.P.V. WENDOH

JUDGE

PRESENT:

Ms Seiling holding brief for Mr. Githui for the applicant

N/A for the respondent

Interested Parties – In persons

Kennedy – Court Clerk