



EDITOR GACONI NJOGU.....PLAINTIFF

VERSUS

SIMON NJOKA MACHARIA.....1ST DEFENDANT

ALEXANDER NDEGE NJOKA.....2ND DEFENDANT

RULING

The application dated 11th September, 2008 is seeking the following orders:-

- (b) *That the defendants/respondents by themselves, their employees, agents or anybody acting on their behalf or at their behest be restrained from implementing and/or purporting to implement the undated award/decision of the Mbeere District Land Disputes Tribunal in Case Number 314 of 2006, the subsequent decree issued on 13th March 2008 by the Principal Magistrate's Court Siakago in Tribunal Case number 1 of 2007 and/or the subsequent and/or consequent orders, pending the hearing and determination of this suit.*
- (c) *That the decision of the Mbeere Land Disputes Tribunal in Case Number 314 of 2006, and the Decree issued subsequently by the Principal Magistrate's court Siakago on 13th March 2007 be stayed pending the Hearing and determination of this suit.*

The same is premised on 7 grounds on its face and supported by the 20 paragraph affidavit of Editor Gaconi Njogu dated 11/9/2008 which has several annexures.

Along with the Chamber Summons the applicant filed a plaint dated the same day in which he is seeking the following prayers:-

- (a) ***A declaration that the undated award of the Mbeere District Land Disputes Tribunal in Land Case Number 314 of 2006 between Simon Njoka Machira and Alexander Ndege Njoka- (as Plaintiff's) and Editor Gachoni Njogu (as defendant), the subsequent judgment adopted and/or entered by the Principal Magistrate's Court Siakago in Tribunal Case No. 1 of 2007 on 8th March 2007 the Decree issued on 13th March 2007 to wit the Land Parcel Number Evurore/Evurore/320 which is registered in the names of Njogu Ngemi alias Njogu Itonya deceased be sub-divided into three equal portions/parcels, each to be taken up by the plaintiff, the 1st and 2nd defendant respectively is ultravires, illegal, null and void.***
- (b) ***That the undated award of the Mbeere District Land Disputes Tribunal in Case No. 314 of 2006, the Judgment entered by the Principal Magistrate's Court Siakago on 8th March 2007 and the Decree subsequently issued n 13th March 2007 be set aside, quashed and/or nullified.***
- (c) ***That the defendants by themselves, their agents, servants or anybody acting under their instructions be permanently restrained from entering upon, occupying, utilizing and /or in any other way interfering with Land Parcel Number Evurore/Evurore/320 or the***

Title/registration to the said land, pending the filing, hearing and determination of succession proceedings in respect of the estate of Njogu Ngemi alias Njogu Itonya deceased.

The application is opposed by both Respondents vide their replying affidavits dated 6th July 2009. The gist of the replying affidavits is that the plaintiff's suit is bad in law and has no legal basis. They have averred that the only recourse open to the applicant was to go on appeal or more this court by way of judicial review but not by way of a declaration suit.

That is principally the issue. If the suit herein is unsustainable in law, then it goes without saying that the same cannot be the basis upon which an interlocutory application can be founded.

I have perused and carefully considered the contents of the entire file- including the authorities cited to me by counsel. I appreciate the fact that they are not binding on me and they can only persuade me.

Unfortunately, I do not share my brother Judge Dulu's position in these matters. Had I been given a decision from the Court of Appeal, I would have dutifully been bound by it and accepted the position.

My position in this matter is that the Land Dispute Tribunal Act is a complete Act in itself. It clearly provides for the procedure to be followed for one to institute the suit and goes all the way to providing for how service should be effected how the Judgment should be written, how the same should be delivered and adopted etc. It also provides for an appeals mechanism of its own.

Once an award is entered as a Judgment of the court, an aggrieved party can either go by way of section 8 (1) of the Act i.e appeal to the Provincial Appeals Committee, or

file an application for Judicial Review if the award meets the necessary parameters for Judicial Review matters. The reason why Judicial Review is open for such matters is basically because this court has supervisory powers over the subordinate judicial or quasi-judicial organs and their decisions can be challenged and quashed by this court. Judicial Review is concerned not with the private rights or the merits of the decision being challenged with the decision making process. Its purpose is to ensure that the individual is treated fairly by the authority to which he has been subjected. It also applies where the authority in question has exceeded its jurisdiction or acted without jurisdiction. That is why parties come to court by way of Judicial Review if they can meet these requirements.

Other than that however, the only other process open to a party under the Land Disputes Tribunal Act is to follow the procedure provided therein. This means going to the Provincial Land Disputes Committee on appeal against the award. The Appeals Committee then decides the matter and sends the award to court for adoption.

Section 8(9) of the Land Disputes Tribunal Act then comes into operation. It allows the aggrieved party to move this court on Appeal points of law only, which must be certified by the court before the appeal is admitted for hearing.

In my view, a declaratory suit cannot be used to circumvent the above procedure. Nor can it be used to quash a Judgment of a court of competent jurisdiction. The Judgment of a court of a competent jurisdiction can only be challenged by way of appeal as provided for by the law.

I must therefore differ with counsel for the applicant herein and find the application dated 11/9/2008 unmeritorious and dismiss the same with costs to the Respondents herein. Any interim orders granted earlier are hereby vacated.

W. KARANJA
JUDGE

Delivered, dated and signed at Embu this 1st day of March 2010

In presence of:-