



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU

Miscellaneous Application 130 of 2006

REPUBLIC.....APPLICANT

VERSUS

CHAIRMAN MERU CENTRAL LAND

DISTRICT TRIBUNAL 1ST RESPONDENT

CHAIRMAN ABOTHUGUCHI EAST

LAND DISPUTES TRIBUNAL2ND RESPONDENT

THE D.C. MERU CENTRAL DISTRICT 3RD RESPONDENT

THE D.O. ABOTHUGUCHI EAST DIVISION4TH RESPONDENT

KABUTEN GITONGA MBAUINTERESTED PARTY

HENRY KINYUAEX – PARTE

JUDGMENT

What is before court is the notice of motion dated 14th October 2005. The *ex parte* applicant seeks for an order of *certiorari* to issue to remove into this court Meru Central District/Abothuguchi Division Land Dispute Tribunal Case No. 89 of 2005 and to quash the proceedings thereof.

The second prayer was for an order to issue against the Chairman of Meru Central Land Dispute Tribunal, the Chairman, Abothuguchi East Land Dispute Tribunal, the District Commissioner Meru Central District, District Officer Abothuguchi Eastern Division from hearing Meru Central District Land Dispute Tribunal case No. 89 of 2005. The grounds upon which the *ex parte* applicant seeks those prayers is that he is the registered owner of land reference No.

Kiamuri”A”/603. He annexed a copy of his title deed which is dated 31st October 1994. He obtained his title by buying several parcels of land in Kiamuri”A”. Thereafter that area was declared an adjudication area and his land was gathered and surveyed. He gave the names of the persons who sold the land to him as M’Marete, deceased, Mungania, M’Rungaru, deceased, and Muriira. After the adjudication process, he was registered as the sole owner of the suit property. After that registration, he had not received any claim and had occupied that parcel of land quietly and uninterrupted. That it was not until 27th September 2005 that he received through the post a hearing notice requiring him to attend a hearing before the Land Dispute Tribunal in Abothuguchi Eastern Division on 6th October 2005. He annexed to his verifying affidavit a copy of the hearing notice and a copy of the claim filed by the interested party on behalf of Kagwata clan. The claim is in the following terms:-

- ***This is a clan land***
- ***We do not know how the objector acquired this land***

- *Those who were supposed to be occupying this suit land are now landless*
- *We have filed this dispute claiming our right of occupation and working on this land*

The *ex parte* applicant stated that he had filed this judicial review on the advice he received that the tribunal had no jurisdiction to hear and determine the interested party's claim. That to allow the same to proceed for hearing would allow the tribunal to entertain a matter which they had no jurisdiction under the law. The interested party's argument was that since the *ex parte* applicant obtained stay in this court on 29th September 2005 staying the proceedings of the tribunal that the *ex parte* applicant had "jumped the gun" since those proceedings had not by then commenced. On the other hand, the *ex parte* applicant argument is that to have allowed the claim to proceed for hearing before the tribunal might have led to the violations of his rights over the suit property. Further, the *ex parte* applicant argued that the interested party's claim before the tribunal was time barred. Section 13(3) for the Land Dispute Tribunal Act provides:-

"For the avoidance of doubt, it is hereby provided that nothing in this Act shall confer jurisdiction on the tribunal to entertain proceedings in respect of which time to bring such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court."

The *ex parte* applicant argument that the interested party claim before the tribunal is time barred is not supported by the documents filed before the tribunal or before this court. As can be seen from the claim of the interested party quoted here above, the interested party did not put a date on his claim. I am therefore unable to hold that his claim is caught by the Provisions of Limitation of Actions Act making it time barred. I am inclined to state just like the interested party submitted that the *ex parte* applicant indeed "jumped the gun." The interested party's claim as can be seen above falls squarely within section 3(1) of the Land Dispute Tribunal Act. That is the section that sets out the limitations of the tribunal's jurisdiction. That section provides as follows:-

"3. (1) Subject to this Act, all cases of a 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".***

As can clearly be seen from his claim the interested party does not indicate that he is seeking from the tribunal orders that exceed the tribunal's jurisdiction. The prayers for orders of *certiorari* and prohibition cannot succeed in the light of my finding that there is no proof that the interested party was seeking the tribunal to act beyond its jurisdiction. The *ex parte* application therefore cannot succeed. Accordingly, the judgment of this court is:-

- 1. That the notice of motion dated 14th October 2005 is dismissed with costs to the interested party.***
- 2. The orders of stay of proceedings issued in this case on 29th September 2005 prohibiting the hearing before the Meru Central Land Dispute Tribunal in Tribunal case No. 89 of 2005 are hereby lifted and vacated.***

Dated and delivered at Meru this 1st day of October 2009.

MARY KASANGO

JUDGE