



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Miscellaneous 13 of 2006

(IN THE MATTER OF APPLICATION BY JULIUS KAREMANU SOLOMON JOEL, SOLOMON NTONGAI, PHILIP GUANTAI M'MUTUNGI AND REBECCA NCEGE

AND

IN THE MATTER OF MERU CENTRAL AND DISPUTE TRIBUNAL CASE NO. 7 OF 2005)

REPUBLIC APPLICANT

VERSUS

MARY KARUGIRA M'MUTUNGI 1ST RESPONDENT

THE DISTRICT COMMISSIONER

MERU CENTRAL 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

EX PARTE APPLICANTS

JULIUS KAREMANU JOEL

SOLOMON NTONGAINE MUTUNGI

PHILIP GUANTAI MUTUNGI

REBECCA NCEGE APPLICANTS

JUDGMENT

The *ex parte* applicants approached this court by way of chamber summons dated 2nd February 2006

seeking leave to apply for orders of *certiorari* and of prohibition. The orders that the *ex parte* applicants sought related to the decision of Meru Central Land Dispute Tribunal No. 7 of 2005 which award was delivered on 16th August 2005. It is therefore apparent that the *ex parte* applicant's application for leave was within the 6 months period provided by order LIII of the Civil Procedure Rules. Annexed to the application for leave was the notice to the registrar and the statement of facts which were supported by the verifying affidavit. All these documents are in this court file. The respondents were wrong to have argued that the *ex parte* applicant's substantive notice of motion was not supported by statement of facts and verifying affidavit. These documents were filed on the same day the application for leave was filed. The verifying affidavit was sworn by Julius Karemanu who swore it on his behalf and on behalf of the other *ex parte* applicants. Having filed those documents, the *ex parte* applicants were not entitled to file further affidavit together with the substantive motion without the leave of the court. See Order LIII Rule 4(2). The Meru Central District Land Tribunal in Case No. 7 of 2005 on 16th August 2005 ordered that land registered in the names of the *ex parte* applicants namely, Parcel No. NYAKI/KITHOKA/2546 and 2547 be combined and be shared out to other persons other than the *ex parte* applicants. Parcel No. 2544 was by the award of the Land Tribunal given to someone else other than the registered owner. The jurisdiction of the Land Dispute Tribunal is clearly set out under section 3(1).

“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”.

That jurisdiction in that section does not extend to the Tribunal having the power to order sub division of registered land and transfer to the respondent. That indeed was the decision of the Court of Appeal in the Case of HCA No. 256 of 2002 **Jotham Amunavi Vrs. The Chairman Sabatia Division Land Disputes Tribunal Enos Kenyani Amunavi.** It stated as follows:-

“The implementation of the decision of the Tribunal entails the sub-division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (see section 89 of the RLA.)

It is clear that the proceedings before the Tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3(1) of the Land Disputes Tribunal Act. By section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrate's court in cases where such latter court has jurisdiction.”

It is clear that the Land Dispute Tribunal was not entitled to award the *ex parte* applicant's land to other parties. Such a power to order transfer of registered property does not fall under section 3(1). It is obvious that the tribunal exceeded their jurisdiction and the award that they made was therefore *ultra virus*. I find that there is no merit in the opposition that was raised relating to the competence of the *ex parte* applicant's application. The *ex parte* applicants were however not entitled to file a further affidavit annexed to the substantive motion dated 2nd February 2006 and filed in court on 22nd February 2006. That affidavit sworn by Julius Karemanu is therefore hereby struck out for having been filed without leave of this court. Other than that, I find that the *ex parte* applicants are entitled to the following judgment:-

1. This court hereby issues an order of certiorari to call to this High Court and quash the decision of Meru Central land Dispute Tribunal case No. 7 of 2005.

2. The costs of this suit is awarded to the ex parte applicant as against the respondents.

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

MARY KASANGO

JUDGE