



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
JUDICIAL REVIEW APPLICATION NO. 12 OF 2015
IN THE MATTER OF L.R. NO. NTIMA/NTAKIRA/1473 TO 4475

AND

IN THE MATTER OF L.D.T NO. 11/04 MERU CHIEF MAGISTRATE

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN MERU CENTRAL.....1ST RESPONDENT

LAND DISPUTES TRIBUNAL

THE CHIEF MAGISTRATE MERU LAW COURTS.....2ND RESPONDENT

THE MERU DISTRICT LAND REGISTRAR.....3RD RESPONDENT

JULIA KINANU KIRERA.....1ST INTERESTED PARTY

EUNICE KINANU MBOROKI.....2ND INTERESTED PARTY

JUDITH GAKII KIRERA.....3RD INTERESTED PARTY

JULIUS KIRIINYA M'MUNGANIA.....EX-PARTE APPLICANT

JUDGMENT

1. In a Notice of Motion dated 29th June 2015 filed pursuant to the leave of this Honourable Court issued on 23rd June 2015, the applicant is seeking the following orders:

(a) The Honourable Court be pleased to issue an order of mandamus compelling the respondents to cancel the sub-division of L.R. No. NTIMA/NTAKIRA/384 and all the resultant title deeds.

(b) Costs be provided for.

2. That application is supported by an affidavit of Charity Kinya Biriga sworn the same date. The application is further supported by copies of documents attached to the supporting affidavit. That Notice of Motion was further amended on 5th July 2015.

3. On 7th September 2015, the 2nd and 3rd interested parties filed a replying affidavit through the firm of M/S Besilio Gitonga, Muriithi & Associates Advocates and on 17th September 2015, they filed a Notice of Preliminary Objection.

4. Attached to the replying affidavit is a copy of a sale agreement made on 19th September 2012.

5. On 16th November 2016, the applicants made an application under **Order 24 Rule 3 C.P.R** for substitution of Charity Kinya Biriga the Applicant herein (deceased) with Julius Kiriinya M'Mungania.

6. On 28th May 2018, the applicant again filed another application under **Section 1A, 1B, 3A C.P.A and Section 68 of the Land Registration Act** seeking an order of inhibition restraining any dealings in land parcel No. NTIMA/NTAKIRA/4473 and 4475 pending the hearing and determination of that application. That application was filed under certificate of urgency.

7. When this matter came up for directions on 27th November 2018, the following directions were taken:

(i) This Judicial Review to be disposed of by way of affidavit evidence.

(ii) The parties are given 21 days each side to file and serve their written submissions.

APPLICANT'S CASE

8. The applicant through her supporting documents contends that the proprietor of land parcel number NTIMA/NTAKIRA/384 is her husband who passed away on 14th April 1999.

9. The applicant contends that the interested parties sued her and one M'Ikiungu Kirera seeking for ½ acre out of L.R. No. NTIMA/NTAKIRA/384 and that the Tribunal awarded them the same despite the fact that the proprietor of the land was dead.

10. The applicant stated that the interested parties went to the Chief Magistrates Court and confirmed the said award as an order of the Court.

11. The applicant further stated that the interested parties applied for the signing of the transfer by the Court and that the Executive officer was authorized to execute transfer documents despite the fact that the proprietor was dead.

12. The applicant contends that the original title deed is still in her possession.

13. In conclusion, the applicant stated that the whole process of obtaining the title deed in respect of the suit property was illegal and irregular and that the 3rd respondent be compelled to cancel the sub-division and transfer of L.R. No. NTIMA/NTAKIRA/384.

THE RESPONDENTS CASE

14. The respondents filed no response to the application.

THE INTERESTED PARTIES CASE

15. The interested parties argued that the 1st and 3rd interested parties instituted the proceedings before the tribunal and that it is on the basis of the decision of the tribunal that they were able to obtain the ownership of the parcels of land in dispute.

16. The interested parties further contend that the 3rd interested party followed the due process in obtaining L.R. No. NTIMA/NTAKIRA/4475 which she thereafter transferred to the 2nd interested party for valuable consideration.

17. The interested parties also argue that the applicant has never challenged the decision of the tribunal as adopted by the Magistrate's Court.

18. It is further contended by the interested parties that the parent parcel of land Number NTIMA/NTAKIRA/384 was owned by MUNGANIA KIRERA (now deceased) and it is hence clear that the Ex-parte applicant has no capacity to sustain these proceedings.

ANALYSIS AND DECISION

19. The applicant has instituted these judicial proceedings seeking an order of mandamus compelling the respondents to cancel the sub-division of land parcel No. NTIMA/NTAKIRA/384 and all the resultant title deeds. The applicants contention is that based on three grounds as follows:

(i) The proceedings in the tribunal and the award thereof was a nullity as they involved the Estate of a deceased person.

(ii) The tribunal lacked jurisdiction to entertain.

(iii) The confirmation of the award and the process of issuance of title deed was illegal, irregular and an abuse of the due process.

20. A copy of the award issued by the Meru Central Land Disputes Tribunal and adoption of the same by Magistrates Court in Meru confirms the subject of this dispute.

21. When the applicants sued Charity Kinya Biriga (deceased) in the Meru Central Land Disputes Tribunal in 2004 over land parcel No.

NTIMA/NTAKIRA/384, the proprietor of the said parcel of land namely MUNGANIA KIRERA had passed away on 24th April 1999.

22. It therefore goes without saying that the proceedings in the tribunal are a nullity in law in that it purported to deal with the Estate of a deceased person.

23. The second issue for my determination is whether the Land Disputes Tribunal was seized with the requisite jurisdiction to entertain the dispute.

24. Under **Section 3 (1) of the Land Disputes Tribunal No. 18 of 1990** (repealed), the law stipulates the jurisdiction of the tribunal 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...”

25. From my literal interpretation of the repealed Act, the tribunal had no jurisdiction to determine disputes relating to ownership and transfer of land. In the result therefore, the tribunal acted in excess of their statutory jurisdiction by purporting to determine ownership and transfer of a registered land. That power was vested with the **Environment and Land Court**. The award issued on 23rd September 2004 and the subsequent adoption by the Magistrates Court Meru is therefore null and void.

26. My view is that if the award issued by the tribunal on 23rd September 2004 was null and void, it follows that all the subsequent orders issued subsequently is of no legal effect including the orders of the Court issued on 28th September 2009 adopting the tribunal’s award.

27. In the case of **Waweru Vs Catholic Diocese of Muranga Registered Trustees (2003) K.L.R 389, Justice Khamoni** (as he then was) held at **page 394** as follows:

“..... disputes over title to land are not within the jurisdiction of tribunal and Lands Disputes Appeals Committee. It can also be said that disputes over contracts are not under that jurisdiction”.

28. Though that decision is from a Court of concurrent jurisdiction, it is nevertheless a good decision which is persuasive enough and I totally agree with the same.

29. Suffice to add that the decisions cited by counsel for the applicant in this case are distinguishable and irrelevant to this case.

30. In the final analysis, I find the Notice of Motion amended on 5th July 2015 merited and the same is allowed as prayed. Each party to bear her own costs.

READ and SIGNED in open Court at Meru this 3rd day of June, 2019.

E.C. CHERONO

ELC JUDGE

3RD JUNE, 2019

In the presence of:

- 1. Mr. Nyenyire holding brief for H. Gitonga for Ex-parte Applicant*
- 2. Mr. Kirimi holding brief for Pasitio Gitonga for 2nd and 3rd Interested parties*
- 3. Attorney General – absent*