



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA JUDICIAL REVIEW CASE NO 22 OF 2017

FORMERLY MERU JUDICIAL REVIEW CASE NO. 50 OF 2013

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDER OF CERTIORARI AND PROHIBITION AGAINST THE MERU SOUTH DISTRICT LAND DISPUTE TRIBUNAL

AND

IN THE MATTER OF THE REGISTERED LANDS ACT CHAPTER 300 LAWS OF KENYA

AND

IN THE MATTER OF MERU SOUTH LAND DISPUTES TRIBUNAL CASE NO. 63 OF 2002

AND

IN THE MATTER OF LAND PARCEL NO. KARINGANI/NDAGANI/93 AND 124

REPUBLIC.....APPLICANT

EXPARTE.....THE COUNTY GOVERNMENT OF THARAKA NITHI

VERSUS

THE DISTRICT COMMISSIONER (AS CHAIRMAN)

MERU SOUTH DISTRICT LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

LAND DISPUTES TRIBUNAL CHUKKA DIVISION.....2ND RESPONDENT

SEBASTIAN M’KANGA M’MUGA.....3RD RESPONDENT

JUDGMENT

1. This Judicial Review application is dated 28th March, 2003 and seeks:

1. An order of certiorari to remove into court and quash the Meru South District land Disputes Tribunal Chuka LDT No. 63 of 2002 proceedings/decision.

2. An order of prohibition prohibiting the 1st and 2nd respondents from ever entertaining any claim

by the 3rd respondent over the applicants land parcel No. Karingani/Ndagani or another.

3. Costs of this application be costs in the cause.

2. Through an application dated 11th March, 2016, the 3rd defendant sought dismissal of this suit for non prosecution. By that time this suit had remained pending in the judicial system for 13 years.

3. On 19th September, 2017, the parties, by consent, agreed to have the application by the 3rd defendant dated 11th March, 2016 withdrawn. The application sought dismissal of this suit for non-prosecution.

4. Mr. Kiautha Arithi, for the exparte applicant, asked the court to grant him 14 days to file his written submissions with respect to this Judicial Review application.

5. It is noted that, by consent, the parties in this suit had on 21st June, 2017, agreed that the exparte applicant, Chuka Town Council be substituted with the County Government of Tharaka Nithi.

6. On 19th September, 2017, upon request of its advocate, the exparte applicant was granted 14 days to file and exchange apposite submissions and the other parties were to file and exchange their submissions within 14 days after receipt of the exparte applicant's written submissions. By consent, the parties agreed to take directions on 23rd October, 2017.

7. On 23rd October, 2017, it transpired that the exparte applicant had not filed and exchanged submissions. As a result, the other parties could not file theirs. The court gave orders as follows:

i. Exparte applicant granted 14 days, as a last chance, to file and exchange written submissions and the respondents to file and exchange their written submissions within 14 days after receipt of the exparte applicant's written submissions AND IF the exparte applicant does not file and exchange its written submissions, nevertheless, the respondents should file and exchange written submission upon expiry of the 14 days granted to the exparte applicant.

ii. Irrespective of if or not the parties will have filed their written submissions, the court will fix a date for delivery of judgment on 28.11.2017

iii. Directions on 28.11.2017

8. On 28th November, 2017, directions could not be taken as the day was a public holiday. On 29th November, 2017, notice was issued to the parties for them to come to court on 19th December, 2017.

9. On 19th December, 2017, Mr. I.C. Mugo held brief for the 3rd respondent. Mr. Kiongo was present for the 1st and 2nd respondents. The exparte applicant was however, not represented.

10. Mr. Mugo reminded the court that on 23rd October, 2017, the exparte applicant had been given a last chance to file and exchange written submissions. As he had not obeyed this court's order he asked the court to dismiss the suit. He also asked the court to deliver its judgment based on the submissions filed by the 3rd defendant, who was the only party who had filed written submissions as directed by the court. Mr. Kiongo for the 1st and 2nd respondents asked the court to move as it wished.

11. This suit has been in the judicial pipeline for a period of close to 15 years. This is a veritable aberration upon the judicial process. It seems to me that as the exparte applicant continued to enjoy stay of the impugned decision granted at the leave stage, he was hell bent on delaying the hearing and determination of this suit for as long as he could continue to do so. In the end the hearing and determination of this suit was delayed for one and a half decades. This is a reality which should invite opprobrium and be veritably deprecated.

12. The court fixed the 31st of January, 2018 as the date for delivery of this judgment.

13. The main issue in the *ex parte* applicant's pleadings is that the Meru South District Land Disputes Tribunal in Chuka LDT No. 63 of 2008, lacked jurisdiction to make the decision it made because it concerned ownership of land.

14. The 3rd respondent avers that what the Tribunal dealt with in LDT No. 63 of 2008 was a boundary dispute which fell within the purview of the provisions of section 3 of the defunct Land Disputes Tribunals Act which states as follows:

“Section 3 (1) Subject to this Act all cases of a civil nature involving a dispute as to:-

a. a 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.

15. The 3rd respondent submits that the *ex parte* applicant had not exhausted the remedies statutorily provided for resolving this dispute. He proffers in support of this assertion, the Supreme Court of Kenya Application No. 2 of 2015, Florence Nyaboke Machani versus Mogere Amosi Ombui and 2 others where the Supreme Court did not impeach the High Court and the Court of Appeal opinions regarding jurisdiction of the Land Disputes Tribunal.

16. I have carefully considered the pleadings proffered by the parties and the one authority proffered by the 3rd respondent.

17. I frame the only issue for determination as: Did the LDT in Meru South District Tribunal Case No. 63/2002 concerning Land Parcel Numbers KARINGANI/NDAGANI/953 and 124 have jurisdiction to hear the case and make its decision? If it had jurisdiction, this suit will be dismissed. If it had no jurisdiction, the orders sought in this judicial review application would be granted.

18. I see the need to go into the genesis of these Judicial Review proceedings. The decision of the District Tribunal was couched in the following terms:

FINDINGS

1. The defendants said the map shows the boundaries of the council and Sabastian.

2. The council did not present any map or document showing that the land belongs to them.

3. Land No. Karingani/Ndagani/124 has two portions which were divided by the road which is not working up to now (sic).

4. The whole shamba measured 2.60 acres and not 81 points. The cover part of the shamba which has the title measures 81 points but the upper side doesn't have the title.

5. The old and the new map shows (sic) that the lower and upper part makes this one land. This map is sheet No. 5 and 22.

- The sitting on 23.7.2002 shows that Chuka Municipal Council should start allocating plot in that land and these already there to another place but not in that land (sic).
- So the land registrar should put together the upper and the lower part so that one title deed

can be produced to Sabastian M’Kanga.

Land visit

- The boundaries of the dip are bounding 2629
- There is a road between the dip and plot 124 which is 2629 not 124 as it is indicated in the map.
- After the visit to the land we found out the council has taken Sabastian M’Kanga (sic) land.
- The committee concluded that the measurements should be taken for the land to know where the other acres are because M’Kanga has been left with 80 points.

JUDGMENT

- We have found that the municipal has taken Sabastian M’Kanga’s land so the council should give back this land to Sabatian M’Kanga.

19. It is clear from the totality of the findings, the land visit and the judgment, that the tribunal was dealing with a boundary dispute. The wording of the judgment that the municipal council had taken the 3rd respondent’s land and should give it back to him, cannot be interpreted that the tribunal was dealing with ownership of land. It was telling the exparte applicant, who had encroached upon the 3rd respondents land not to continue trespassing on the 3rd respondent’s land and to move out of the encroached land whose boundaries the exparte applicant had violated.

20. In the circumstances I grant the following orders:

1. This Judicial Review suit is dismissed.
2. Stay granted at the leave stage on 10th March, 2003 is vacated forthwith.
3. The decision of Meru South District Disputes Tribunal in Case No. 63 of 2002 is upheld.
4. Costs are awarded to the 3rd respondent.

Delivered in open court at Chuka this **31st day of January, 2018**

in the presence of:

CA: Ndegwa

Miss Munga h/b DJ Mbaya for the 3rd Respondent

Sbastian M’Kanga – 3rd Respondent

Other parties absent

P.M. NJOROGI

JUDGE