



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISII

MISC APPL NO. 37 OF 2009

IN THE MATTER OF AN APPLICATION BY NYABARO GISEMBA TO APPLY FOR

JUDICIAL REVIEW ORDER IN THE NATURE OF CERTIORARI

AND

IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT, ACT NO. 18 OF 1990

IN THE MATTER OF REGISTERED LAND ACT, CAP 300 OF THE LAWS OF KENYA

AND

REPUBLIC.....APPLICANT

-VERSUS-

CHIEF MAGISTRATE'S COURT1ST RESPONDENT

SUNKA LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

AND

JOEL MIRORO MIYOGO.....INTERESTED PARTY

EX PARTE

SAMWEL NYABARO GISEMBA

RULING

By an Application dated 22nd May, 2009 brought by way of an ex parte Chamber Application brought under order 53 Rule 3,5 and 7 and under section 8 and 9 of the Law Reform Act and section 3A of the Civil Procedure Act, of the civil procedure Act, the Applicant moved the court and sought the following orders:-

1. That the court do issue an order of certiorari to quash the proceedings and decisions of the 1st Respondent dated 27th January, 2009 in Misc. Application No. 1 of 2009 where the 1st Respondent adopted an award by the 2nd Respondent that lead to the cancellation of title in respect of land Reference No. Wanjare/Bogiakumu/4003 and ordered that a portion of the said land be awarded to the interested party herein.

On the 4th January, 2009 the Applicant herein was granted leave to commence and institute the proceedings herein and it is against this background that this Application dated 22nd May, 2009 was filed.

The Application was based on the grounds that the Interested Party had filed the dispute before the 2nd Respondent which did not have any jurisdiction to hear the dispute under the provisions of the Land Disputes Tribunal Act No. 18 of 1990 and that the 2nd Respondent exceeded its jurisdiction by making a decision that led to the cancellation of title and that the person who sold the suit land was dead and hence the person who instituted the dispute did not obtain letters of administration and thus lacked capacity to file the dispute.

The Application was further supported by the Affidavit of Samuel Nyabaro Gisemba which essentially expounded on the grounds on which the Application was based.

When the Application came for hearing Mr soire Learned counsel for the Applicant submitted that the proceedings before the Tribunal was on a claim grounded on a sale of land between the Interested Party and one clement Nyaata Gisemba and that under the land disputes tribunal a dispute involving a contract of sale is not within the purview of the tribunal and hence the tribunal lacked jurisdiction to hear and determine the matter before it.

I have considered the Application before me and the submissions by learned counsel. On the issue of whether the tribunal had jurisdiction to hear the dispute I am guided by the case of **S.K. Macharia –Versus- Kenya Commercial Bank Ltd (2012)eKLR** where the Supreme Court analysed the source of jurisdiction conferred on a court and at paragraph 68 it held:-

“A court’s jurisdiction flows from either the constitution or legislation or both thus a court of law can only exercise jurisdiction as conferred by the constitution or any written law. It cannot arrogate itself jurisdiction exceeding that which is conferred by law.”

The land disputes tribunal at the time when the initial reference was forwarded to it was exercising a quasi-judicial function just like any court and it derived its powers from the Land Disputes Tribunal (now repealed). In the said Act a claim on a contract for sale or enforcement of a contract is not contemplated as matter within the jurisdiction of the tribunal.

The lack of jurisdiction is not a procedural issue but one that goes to the heart of the matter and without jurisdiction the tribunal could not entertain a claim before and I thus find that the Suneka Land Dispute Tribunal did not have jurisdiction and by extension the adoption by 1st Respondent of what was otherwise an illegality is thus void and invalid.

The upshot of the above is that I will allow the exparte Applicants application dated 13th May, 2014 and quash the proceedings and decision of the 1st Respondent dated 27th January, 2007.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at NAROK on this 23RD day of FEBRUARY, 2018.

Mohamed N. Kullow

Judge

23/2/18

In the presence of: