



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MIGORI

ELC JR CASE NO. 16 OF 2017

IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW

FOR ORDERS OF CERTIORARI AND PROHIBITION

IN THE MATTER OF LAND DISPUTES TRIBUNAL

ACT (NOW REPEALED) ACT NO. 18 OF 1990

AND

IN THE MATTER OF MIGORI COUNTY LAND

DISPUTES TRIBUNAL – AWENDO DIVISION.

AND

IN THE MATTER OF SENIOR RESIDENT MAGISTRATE’S

COURT AT RONGO MISC APPLICATION NO. 26 OF 2011

BETWEEN

REPUBLIC.....APPLICANT

AND

CHAIRMAN MIGORI COUNTY

LAND DISPUTES TRIBUNAL –

AWENDO DIVISION.....RESPONDENT

AND

JOHN OLOO KICHAWA

HELLEN ATIENO MSEDA.....INTERESTED PARTIES

AND

PETERLIS A. AYACKO.....EXPARTE

JUDGMENT

1. By Chamber summons (exparte) dated 25/11/2011, the ex-parte applicants namely PETELIS A. AYACKO and ALICE YOGO ASINJO

sought leave of the court to apply for an order of certiorari to quash the decision of an award of Migori Land Disputes Tribunal, Awendo Division dated 25th October, 2011, an order of prohibition against the District Land Registrar and Surveyor Migori County from implementing the award and those orders to operate as stay of the implementation of the award. On 29th November, 2011, the court (R. Sitati, J) granted the leave sought to the ex-parte applicants.

2. Pursuant to the leave granted by court, the 2nd applicant authorized the 1st applicant to swear a verifying affidavit on her behalf by her letter of authority dated 25/11/2011. Therefore, the 1st applicant filed a Notice of Motion **dated 14/12/2011** for Judicial review under Order 53 Rule 3 of the Civil Procedure Rules (hereinafter referred to as the application). He sought the following orders:-

i. THAT this honourable court be pleased grant an order of Certiorari to remove and bring to the High Court for purposes of quashing the award of Migori county Land Disputes tribunal- Awendo Division dated 25th October 2011 which award was illegally adopted as Decree vide Rongo PMC Misc Application No. 26 of 2011 terminating the 1st applicant's title over parcel of land number NORTH SAKWA/KAMRESI/1140 and 1141 and awarding same to the interested parties.

ii. THAT this honourable court be pleased to grant an order of prohibition directed against the District Land Registrar and Surveyor Migori County prohibiting them from implementing the award dated 25th October 2011 and the consequent Decree vide Rongo PMC Misc. Application No. 26 of 2011.

iii. The cost of the application be borne by the interested parties.

iv. Any further orders as the court may deem fit and just.

3. The application is premised on the 1st applicant's supporting affidavit sworn on even date and his statutory statement dated 25/11/2011. The grounds include:-

a) Land Dispute Tribunal Act No. 18 of 1990 was repealed on 30th day of August 2011 by the operation of Environment and Land Court Act hence no lawful award could be rendered by the Respondent on 25th October 2011 and consequently no legal decree could be obtained in the said Rongo PMC Misc. Application No. 26 of 2011.

b) At any rate even the said award dated 25th October 2011 was obtained without jurisdiction of the then District Land Disputes Tribunal Act as same determined title number NORTH SAKWA/KAMRESI/1140 AND 1142 which matters the said Act now repealed did not authorize the Respondent to determine .

c) Article 40 of the Constitution guarantee protection of right to property.

4. Mr. Kisera learned counsel represents the applicants. The respondents/and the interested parties never responded to the application as ordered by the court or at all.

5. The applicants stated in their statutory statement that the 1st applicant is the sole registered owner of title Nos. NORTH SAKWA/KAMRESI/1140, 1142 and 1143 which were all registered under the Registered Land Act Cap 300 Laws of Kenya (repealed Cap 300). The 2nd applicant's late husband was the sole registered owner of title No. NORTH SAKWA/KAMRESI/1141, which he had ideally sold to the 1st applicant before his death and the same is also registered under repealed Cap 300. The interested parties are descendants of the original owner of the suit title and they sold the land to the late husband of the 2nd applicant who eventually sold it to the 1st applicant. The 1st interested party complained to the Land Disputes Tribunal, Awendo Division which awarded them title No. NORTH SAKWA/KAMRESI/1140 and 1141, after illegally terminating or revoking the applicant's registration thereof. It then generated the instant application.

6. The applicants' learned counsel filed submissions dated 23/1/2018. He cited **Section 3 (1) of the Land Disputes Tribunal Act, 1990** (repealed LDTA) and **Kisii ELC Misc Application No. 35 of 2012; R-VS-Land Disputes Tribunal (KSMU) Exparte Fanuel Okoth.**

7. I have looked at the application, the accompanying documents together with the enclosed proceedings, submissions and the case law cited by the ex-parte applicants' learned counsel. The issue for determination is whether the respondent exceeded his jurisdiction by the entertainment of the land dispute and the reliefs available to the Exparte applicant.

8. The respondent drew his mandate from **Section 3 (1) of the repealed LDTA** which provide as follows :-

“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:

c) Trespass to land

Shall be heard and determined by a Tribunal established under Section 4.

9. The Environment and Land Court Act, 2011 (ELC Act) which commenced on 30th August, 2011, at Section 31, repealed the LDTA. It provides:-

“The Land Disputes Tribunal Act (No. 18 of 1990) is repealed .”

10. The respondent delivered a verdict on 25th October, 2011 and it related to a dispute over ownership and transfer of the suit land. By dint of Section 3 (1) of the repealed LDTA, the respondent had no jurisdiction to deal with the nature of the dispute which involved the transfer of registered land.

11. Furthermore, the jurisdiction of the respondent under the section 3 (1) of the repealed LTDA had been extinguished by the enactment of the ELC Act, 2011 with effect from 30th August, 2011.

12. The respondent and subsequently Rongo court in PMCC Misc Application No. 26 of 2011 lacked jurisdiction in making the verdict (award) dated 25th October, 2011 and adoption of the same respectively. This court is alive to the right to protection of property as provided for under **Article 40 of the Constitution of Kenya, 2010**.

13. In the circumstances, I am inclined to concur with the able submissions by learned counsel for the applicant.

14. I find the respondent’s decision rendered on 25th October, 2011 to be ultra vires as the respondent and Rongo PM’s court had no jurisdiction over the matter as at that time. The Exparte applicant is entitled to the order of certiorari to quash the impugned decision and other orders sought herein; see **Kimote Musau-vs-Makumi Maluva Muthwethau & 2 others (2015) eKLR**.

15. Accordingly, I grant orders of certiorari and prohibition sought in the application dated 14th December, 2011.

16. I make no order as to costs.

DELIVERED, SIGNED and DATED in open court at MIGORI this 13th day of February , 2018.

G. M. A. ONGONDO

JUDGE

In the presence of:

Mr. Kwanga Mboya learned counsel holding brief for Mr J.Kisera learned counsel for the applicant(s).

Tom Maurice Court Assistant

G. M. A. ONGONDO

JUDGE