



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC JR. 1 OF 2018

REPUBLIC.....APPLICANT

VERSUS

LAIKIPIA WEST LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

PRINCIPAL MAGISTRATE’S COURT- NYAHURURU.....2ND RESPONDENT

AND

LAWRENCE MAINA RUARAINTERESTED PARTY

EX-PARTE

CHARLES KARIUKI NJURI

JUDGMENT

(Judicial Review motion for orders of certiorari to quash an award of the Land Disputes Tribunal; dispute having been one of ownership of certain land; clear that the Tribunal did not have jurisdiction to entertain such a dispute; award of the Tribunal quashed and Magistrate’s Court barred from adopting it as a decree)

1. This is a judicial review motion filed on 16 June 2011, pursuant to leave granted on 26 May 2011. The main prayer sought in the motion is for an order of certiorari to remove to this court and quash the proceedings and decree issued on 4 January 2011 in Nyahururu PMC Land Dispute Case No. 29 of 2010. It is the position of the ex-parte applicant that the Tribunal did not have jurisdiction to entertain the subject dispute and therefore its award is a nullity in law and incapable of founding any judgment.

2. To his motion, the ex-parte applicant has annexed a copy of the impugned award dated 14 April 2011, which I have looked at. I have seen that the complainant before the Tribunal was one Lawrence Maina Ruara, the named interested party in this suit. He presented a claim before the Tribunal over the land parcel Mutara/Mutara Block II (Uruku)/460 which land is registered in the name of the ex-parte applicant. The Tribunal found that though the title is in the name of the ex-parte applicant, the land actually belongs to one Benson Ruara Kimaru. The Tribunal ordered the Land Registrar of Laikipia West District, to nullify the title of the ex-parte applicant and to issue a new title to the interested party, the son of Benson Ruara Kimaru. The interested party then filed the award before the Nyahururu Magistrate’s Court for adoption. The adoption application was to be heard on 7 June 2011, but the ex-parte applicant managed to obtain a stay before the same could be adopted.

3. In his submissions, Mr. Gakuhi Chege, learned counsel for the ex-parte applicant, inter alia argued that the Tribunal went outside its mandate as provided under Section 3 of the Land Disputes Tribunal Act, 1990. He also submitted that the interested party had no capacity to represent the estate of his late father, Benson Ruara Kimaru.

4. In the course of these proceedings, the interested party died, and no application for his substitution was ever made. The suit against him abated by operation of law.

5. I have considered the motion which is not opposed by the respondent. The jurisdiction of the Land Disputes Tribunal was provided for under Section 3 of The Land Disputes Tribunal Act, 1990 (repealed by the Environment and Land Court Act, of 2011) which provided 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,

shall be heard and determined by a Tribunal established under section 4.

6. It will be discerned from the above provision, that Land Disputes Tribunals were only permitted to hear cases concerning division of, or determination of boundaries to land; claims to occupy or work land; or disputes over trespass to land. What was presented before the Tribunal by the interested party was a claim over ownership of land for which the Tribunal clearly did not have jurisdiction. It is also apparent that at the time of presenting the dispute, the interested party did not hold any letters of administration for the estate of his late father and he had no capacity to present the dispute.

7. I have no doubt in my mind that the award of the Tribunal, having been made out of jurisdiction, is a nullity and must be quashed by an order of certiorari. The said award is hereby quashed. I also bar the Nyahururu Magistrate's Court from adopting the said award and the proceedings in Nyahururu LDT Case No. 8 of 2011, are also hereby declared a nullity and are quashed.

8. The applicant shall have the costs of this suit as against the estate of the interested party as the interested party had no business presenting such a dispute in the wrong forum.

9. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 9th day of May 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Weche for the respondent.

No appearance on the part of M/s Gakuhi Chege & Co. for the ex-parte applicant.

Court Assistant :Nelima Janepher.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU