



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

JUDICIAL REVIEW CASE NO. 163 OF 2006

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF CERTIORARI/PROHIBITION AGAINST THE MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL ABOTHUGUCHI DIVISION

AND

IN THE MATTER OF LAND PARCEL NO. ABOTHUGUCHI/MAKANDUNE/107

AND

IN THE MATTER OF MERU CMCC LDT NO. 19 OF 2006

REPUBLICAPPLICANT

VERSUS

THE DISTRICT COMMISSIONER (AS CHAIRMAN MERUCENTRAL

LAND DISPUTES TRIBUNAL).....1ST RESPONDENT

ABOTHUGUCHI DIVISION.....2ND RESPONDENT

MARGARET MARETE.....INTERESTED PARTY

EXPARTE APPLICANT.....MWITAITI MUGWIKA

JUDGMENT

INTRODUCTION

1. The exparte applicant has moved this court by way of a chamber summons under certificate of urgency seeking the following orders;

- a. That this honourable court be pleased to grant the exparte applicant leave to apply for the judicial review of CERTIORARI to bring before itself the proceedings and award in Meru Central District L.D.T case No. 98 of 2005 to the extent that it affects the exparte applicant land parcel no. Abothuguchi/Makandune/107.
- b. That this honourable court be pleased to grant the exparte applicant to apply for the judicial review orders of PROHIBITION prohibiting the 1st and 2nd respondents from further dealing or entertaining any claim by the interested party and/or dealing with land parcel no. Abothuguchi/Makandune/107
- c. That grant of the said leave do operate as stay of proceedings in Meru CMCC L.D.T No. 19 of 2006 before the Chief Magistrate Meru and implementation of the said award be stayed pending the determination of the motion to be filed herein.
- d. That costs for this application be in the cause.

2. That application is supported by grounds on the face of that application, statement of facts and a verifying affidavit. Also in support of the said application is a green card of the suit property registered in the name of the exparte applicant herein and a search certificate issued on 3.7.2018. There is also a copy of proceedings and an award issued by the land disputes tribunal Meru Central district attached to the verifying affidavit. When the application was placed before the duty court who upon consideration of the materials placed before him

granted orders in terms of prayers 1 and 2 thereof. The learned Judge also ordered the leave so granted do operate as a stay in terms of prayers 3 of the said application.

3. The learned Judge did not specify when the ex parte applicant was to file the substantive grant motion but by dint of the operations of law, the ex parte applicant filed the substantive motion under order LIII rule 3 on 19/10/2006. On 14/11/2008, the interested party filed a replying affidavit opposing the said motion.

4. When the case came up for directions on 2.5.2013 the parties agreed by consent to dispose of the same by way of written submissions.

EX PARTE APPLICANT'S POSITION

5. The ex parte applicant contends that the Land Disputes Tribunal went way beyond its jurisdiction to determine issues of ownership of land where the land dispute tribunal no. 18 of 1990 (repealed) did not cloth them with such a power.

6. The applicant also averred that the alleged purchase of the 10 acres by the interested party in 1976 is clearly time barred by virtue of the limitation of actions act cap 22 laws of Kenya.

7. The ex parte applicant also argues that the purchase of the suit property was allegedly carried out by the interested party's deceased husband and in the absence of the grant of letters of administration, the interested party has no locus standi in those proceedings.

INTERESTED PARTY'S POSITION

8. The interested party averred that the notice of motion before court is improper since the court lacks jurisdiction to entertain the same since it is not made under the provisions of the law reform Act (cap 26 laws of Kenya).

9. The interested party also argues that the leave to institute the Judicial Review proceedings was made well after expiry of 6 months since the date of the tribunal's award making the same null and void abinitio.

RESPONDENT'S CASE

10. The respondents did not file any replying affidavit or grounds of opposition in response to the notice of motion.

EX PARTE APPLICANT'S SUBMISSIONS

11. The ex parte applicant through the firm of B.G Kariuki submitted that the land disputes tribunal derives its mandate from section 3 of the land disputes tribunal Act No. 18 of 1990 which are as follows:

- a. The division of or determination of boundaries to land
- b. A claim to occupy or to work on land and
- c. Trespass to land

12. The learned counsel submitted that the tribunal exceeded its power in deciding on the ownership to land which was ultra vires.

13. The learned counsel also submitted that the interested party Margaret Marete had no locus standi to institute judicial review proceedings on behalf of her late husband for lack of locus standi.

RESPONDENT'S SUBMISSIONS

14. The respondents through J.M Kiongo Litigation counsel instructed by the Hon. Attorney General conceded the application and submitted that under the provisions of section 3 (1) of the said Disputes Tribunal No. 18 of 1990 (repealed) the District land Disputes Tribunal Exceeded its jurisdiction and that the decision it made may be quashed.

INTERESTED PARTY'S SUBMISSIONS

15. The firm of Gichunge Muthuri & Co advocates instructed by the interested party submitted that the ex parte applicant brought this suit way beyond the six (6) months from the date the impugned decision was made. The learned counsel stated that the notice of motion dated 18/10/2006 is made under order LIII rule 3 (1) CPR and that order 8 & 9 of the Law Reform Act cap 26 law of Kenya was not cited. As such, the suit is incompetent and ought to be dismissed. He cited the following cases in opposition thereto:

- **CA no. 233 of 1996 (Nairobi) Kimanzi Misoo vs David Mulwa Muthusi.**

ANALYSIS AND DECISION

16. This Judicial Review application seeks to quash the decision of the land Disputes Tribunal Meru Central which is not dated but attached

to the verifying affidavit of the exparte applicant sworn on 5th September 2006. The said tribunal in their decision purported to sub-divide land registered in the name of Mwitaiti Mugwika and certificate of title issued on 3.7.1978. the land disputes tribunal Meru Central is a creature of statute which derived its power from the land dispute tribunal no. 18 of 1990 (now repealed) under section 3 (1) of that Act the mandate of the tribunal was as follows:

- a. The division of or determination of boundaries to land.\
- b. A claim to occupy or to work on land and
- c. Tress pass to land.

17. The decision of the said tribunal as shown in the attached proceedings and award indicates that it purported to determine contract and land ownership of land. Those issues are clearly beyond the jurisdiction of the land disputes tribunal. As such the award issued by the land disputes tribunal Meru Central exceeded its jurisdiction and therefore the same is null and void. Suffice to say that an award issued without jurisdiction cannot be subject to the limitation of the six months period as required under order LIII rule 2 Civil Procedure Rules. The exparte applicant need not have sought leave of this court for extension of time before instituting the said chamber summons dated 14th September 2006. The decision cited by the counsel for the interested party being Kimanzi Misoo vs. David Mulwa Muthusi (CA no. 233 of 1996) unreported is distinguishable as the court in the cited case had jurisdiction to determine the issue in question unlike the instant case.

18. In the upshot, I find the notice of motion dated 18th October 2006 merited and the following orders hereby issued;

- i. An order of certiorari be and is hereby issued to bring before this honourable court the proceedings and award of the land disputes tribunal, Meru central district LDT case no. 98 of 2005 for purposes of quashing.
- ii. An order of prohibition be and is hereby issued prohibiting the 1st and 2nd respondent from implementing the award of the land disputes tribunal Meru Central district issued in LDT case no. 98 of 2005 touching on land parcel no. ABOTHUGUCHI/MAKANDUNE/107.
- iii. Each party to bear his own costs.

Read, delivered and signed in the open court this 14th day of June, 2018

E.CHERONO

ELC JUDGE

In the presence of:

CC: Galgalo.

Mr. B.G Kariuki for exparte applicant present.

N/A for interested party.

N/A for respondent.