



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JR.MISC. NO. 27 OF 2009

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN MERU CENTRAL DISTRICT

LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

STANLEY MUTUA M'RIMBERIA.....INTERESTED PARTY

KIMATHI KIAMBI RIMBERIA.....INTERESTED PARTY

EX PARTE:

GERALD RIMBERIA M'RIRIA.

KENNETH KIAMBI RIMBERIA.

JUDGMENT

1. The Ex-parte Applicant's Notice of Motion dated **30/6/2009** seeks an order that this court do issue an order of certiorari, to remove to court and quash the decision of the Meru Central District Land Disputes Tribunal dated **22/4/2009** in **Tribunal Case No 67 of 2008** , and also an order of prohibition do issue against the respondent and the 1st and 2nd interested parties herein prohibiting them from implementing the decision Meru Central District Land Disputes Tribunal dated made on **22/4/2009** in **Tribunal Case No 67 of 2008** and that the costs of the motion be provided for.

2. The application is supported by a statement of facts and a verifying affidavit sworn by the Ex-parte applicant both dated **9th June 2009**.

3. The substantive notice of motion was filed on **1/7/2009** following the grant by this court of leave on **11/6/2009**. Along with that leave, a stay was granted, to stay the implementation of the respondent's decision Meru Central District Land Disputes Tribunal dated **22/4/2009** in **Tribunal Case No 67 of 2008**.

4. On **1/12/2014**, this court ordered that the Judicial Review Notice of Motion be heard by way of written submissions. Subsequently the 2nd Ex-parte applicant filed submissions on **15/7/2015** and the interested parties filed theirs on **2/12/2014**. The respondent filed its submissions on **2/11/2016**. On **18/10/2015** it was confirmed to this court that the 1st ex parte applicant is deceased. Substitution not having taken place his case abated and now only the case by the 2nd ex parte applicant remains.

5. The grounds upon which any Judicial Review Notice of Motion will be determined are those in the statement of facts and no other. The ex parte applicant listed 16 grounds which are capable of being summarized as follows:

a. That the respondent acted illegally and without any reason in purporting to determine how the land should be shared among the 1st ex-parte applicant's family members basing the sharing on an imaginary agreement of the applicant, the interested party and clan elders.

b. That the respondent had no power to cancel titles and order the transfer of the land to other parties.

6. All the two grounds above boil into one thing: the Tribunal did not have jurisdiction to determine the dispute.

7. It is the duty of this court to examine the record before it to determine the issues that arise from the above grounds. However before that it must be mentioned that the Judicial Review Notice of Motion is opposed. The two interested parties filed a replying affidavit dated 6/8/2009 on 3/9/2009. They also filed a preliminary objection which was heard and dismissed by this court in a ruling dated 14/6/2012.

The Ex-Parte Applicant's Case

8. The Ex-parte applicant's case is laid out in the affidavit and the statement of facts. He states that the interested parties lodged a claim being **Land Disputes Tribunal Case No. 67 of 2008** with the respondent; that the respondent heard the dispute and subsequently delivered an award dated 22/4/2009; that the award was filed in court as **Meru CMCC LDT NO 19 of 2009** and read to the parties on 4/6/2009.

9. The genesis of this dispute is that that the 1st ex parte applicant owned land parcel **Abothuguchi /Katheri /894** which he subdivided into three parcels, **Abothuguchi /Katheri /2418,-2421** (inclusive). Later on he transferred parcel number **2421** to the 2nd ex parte applicant who is his son in the year **2004**. Gerald, the 1st ex parte applicant retained ownership of the rest of the parcels. In the year **2008** he called all his family members and informed them how he had shared out his land and told them to get money so that he could transfer **Parcel No 2419** to them. He told them, that he had reserved **Parcel Number 2418** for his **4** daughters and **Parcel Number 2420** for himself and his wife. Later, on **21/10/2008** he was summoned to the hearing of **LDT Case NO 67 of 2008** which his sons who are the interested parties had commenced against him before the respondent.

10. The respondent heard the case and decided that the land formerly referred to as **Plot Number 894** should be shared out to family members according to the first agreement which came up in the meeting of Gerald, his sons and the Anathiu Clan elders and that **Parcel Number 2418** should go to the 2nd interested party, while **Parcel Number 2419** should go to the 1st interested party. **Parcel number 2420** should go to the four daughters of Gerald. **Parcel No 2421** was allocated to the ex parte applicants and Martha Gerald M'Rimberia. The tribunal also ordered that the claimants should have their parcels transferred to them as soon as possible and that any party dissatisfied with their award could appeal to the Provincial Land Disputes Tribunal (meaning Appeals Committee) within 30 days of the award.

11. It is the ex parte applicant's case that the respondent acted in excess of jurisdiction conferred upon it by the land disputes tribunals act in issuing the orders which affected ownership of **Parcel Number 2421** in that the respondent decided that the said title be cancelled and be registered in the joint names of the ex parte applicants and Gerald's wife. They aver that on the basis of the grounds set out, the respondent's decision should be quashed and unless the orders sought are granted, the applicants would suffer irreparable loss.

The Interested Party's Case

12. The interested parties through the sworn affidavit of the 1st interested party who avers that he has the

authority of the 2nd interested party to swear it, oppose the motion and pray that the Judicial Review Application should be dismissed. They aver that their father had two wives. The first wife had four children including the interested parties, the 2nd wife had three children who include the 2nd ex parte applicant; that in 1991 Gerald their father met with his sons at home and agreed to subdivide **Land Parcel 894** in to 4 parcels, that is: three parcels of 2 acres and one parcel of 5 acres. By that agreement all the sons regardless of which house they came from would get 2 acres and Gerald would retain 5 acres, that later Gerald transferred 5 acres to the 2nd ex parte applicant and the other three portions remained in his name; it was at this point that the interested parties moved the respondent for orders and got the award that has triggered this judicial review motion. They believe that the respondent was right and that it acted within its jurisdiction in determining the matter as the 1st ex parte applicant had defied the verdict of clan elders. Further they submit that if the ex-parte applicants were aggrieved they should have appealed to the Provincial Appeals Committee.

13. The Ex-parte applicant argues that the Land Disputes Tribunal exceeded its mandate granted in **Section 3(1)** of the **Land Disputes Tribunal Act** which provides 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.

14. The Ex-parte applicants exhibited copies of the green cards for **parcel numbers 2418, 2419, 2420**, registered in the 1st ex parte applicant's name and **parcel no 2421** registered in the name of the 2nd ex parte applicant. The ex-parte applicants relied on the decisions in **Meru Misc Appl. 75 of 2006-M'Muthaura M'Mukua Vs Senior Resident Magistrate And 2 Others** as well as the decision of the Court Of Appeal in **Kisumu Civil Appeal No 256 Of 2002 – Jotham Amunavi Vs Chairman Sabatia Division Land Disputes Tribunal**.

15. In the **Jotham Amunavi** case, the Court Of Appeal stated as follows in its judgment:

“The implementation of the decision of the tribunal entails the subdivision of the suit land into two parcels and opening a register in respect of each subdivision and thereafter the transfer of the subdivision of half acre to Kenyani.

It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3(1) of the Land Disputes Tribunal Act. By section 159 of the RLA, such a dispute can only be tried by the High Court or by the Resident Magistrates' court in cases where the latter court has jurisdiction.”

16. The Court Of Appeal set aside the judgment of the High Court in the **Jotham** case (supra).

17. The Court of Appeal decision in the case of **M'Marete vs. Republic & 3 Others, [2004] eKLR (Civil Appeal No. 259 of 2000, Court of Appeal** (sitting at Nyeri) reiterated that a Land Disputes Tribunal had no power to award parcels of land falling under the **Registered Land Act** to the appellant. So did the court in the case of **Republic -Vs- Borabu District Land Disputes Tribunal & Another Ex-Parte Jemima Kemunto Masare [2010] eKLR**. In the latter case while dealing with a situation where the Tribunal dealt with and determined a dispute concerning land ownership, ownership the Court stated as follows:

“From the foregoing it is quite clear that the 1st respondent is not seized of jurisdiction to entertain and determine a claim touching on ownership and or title to Land registered under the Registered Land Act, nor adjudicate or arbitrate on issues touching on and or concerning succession, neither does it have jurisdiction to direct the rectification of the register in respect of land registered under the Registered Land Act. Yet by the 1st respondent reaching the decision set out in extenso elsewhere in this ruling, it was simply doing what it was not supposed to do as stated above. The 1st respondent being a creature of statute can only do that that the statute tells it to do. It cannot purport to act in excess of what the statutes allows it to do. Nor can it confer on itself jurisdiction that the statute has expressly or impliedly ousted it from. It cannot also not avoid to do what the statute expressly allows it to do. If the 1st respondent was to confer on itself jurisdiction which it does not have then, it will be acting in excess or want of jurisdiction and if it was to avoid such jurisdiction then it will be guilty of abduction of responsibility and or duty. Either way, the 1st respondent would have failed in its mandate and the resultant award would be liable to being quashed by an order of certiorari so long as the application for such remedy was made within the stipulated period of time-six months!”

18. The exhibits brought to this court by the ex parte applicants clearly show that the respondent dealt with registered land. The nature of the orders given by the respondent would affect title held by the ex-parte applicants. In my view the directives issued in the decision of the respondent delved into the issue of ownership and registration of the land as well as the role of the court meant to read the award, the Magistrate’s court. Such a decision of the respondent is liable to be quashed by this court at the instance of the Ex-parte applicants since it would if implemented result in cancellation of title issued in the name of the 2nd ex-parte applicant over **parcel number 2421**.

19. I therefore agree with the position set out in the above decisions in so far as in the instant case and I find that the award of the respondent was clearly not within the mandate granted to the LDT by **Section 3(1) of the Act**. It goes without saying that the decree emanating from the Magistrate’s Court that read the Respondent’s award made in Meru Central District Land Disputes Tribunal dated on **22/4/2009** in **Tribunal Case No 67 of 2008** is a nullity *ab initio*.

20. In the end I find that the Judicial Review Notice of Motion has merits and I grant an order of certiorari removing to this court the decision of the respondent dated **29/3/2011** and quashing it. I also issue an order of prohibition, prohibiting the respondents and the interested parties from implementing the decision in Meru Central District Land Disputes Tribunal dated made on **22/4/2009** in **Tribunal Case No 67 of 2008**.

21. The respondent and the interested parties shall bear the costs of these proceedings.

Dated, and signed at Kitale on this **1st** day of **August, 2018**.

MWANGI NJOROGE

JUDGE

ENVIRONMENT AND LAND COURT, KITALE

Delivered at Meru on this **29th** day of August, 2018 in open court in the presence of:

Mr. Mutunga holding brief for Ms. Mwiraria for exparte applicant

N/A for interested party

Mr. Kiongo for respondent

C/A Mutua

MWANGI NJOROGE

JUDGE

ENVIRONMENT AND LAND COURT, KITALE.