



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

JUDICIAL REVIEW MISC. APPLICATION NO. 9 OF 2016

IN THE MATTER OF AN APPLICATION FOR LEAVE TO

APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI

AND

**IN THE MATTER OF ADOPTION OF AN AWARD BY MURANG'A LAW COURTS IN LAND
TRIBUNAL CASE NO. 41 OF 2009**

AND

**IN THE MATTER OF SECTION 31 OF THE ENVIRONMENT AND LAND COURT ACT NO.
19 OF 2011**

BETWEEN

REPUBLIC APPLICANT

-VERSUS-

MARAGUA LAND DISPUTES TRIBUNAL 1ST RESPONDENT

**PRINCIPAL MAGISTRATE MURANG'A LAW COURTS
2ND RESPONDENT**

PAUL NJUGUNA MUCHOKI 3RD RESPONDENT

JOHN MBUGUA MUCHOKI 4TH RESPONDENT

JOHN KARANJA MUCHOKI: EX PARTE APPLICANT

RULING

1. Pursuant to leave granted on **7th June, 2016** to apply for *certiorari*, the *ex parte* applicant, John Karanja Muchoki, brought the notice of motion dated **20th June, 2016** seeking an order of *certiorari* to remove to this court for purposes of being quashed, the decision made by the Maragua Land Disputes Tribunal on 27th May, 2009 and adopted by the Principal Magistrate Court at Murang'a as its judgment on 22nd April, 2016.

2. The *ex parte* applicant, *inter alia*, contends that the Tribunal did not have jurisdiction to entertain the issues placed before it. In particular, the *ex parte* applicant contends that the Tribunal did not have jurisdiction to deal with the issue of title and ownership of land. It is pointed out that the Tribunal ordered that the *ex parte* applicant's land to wit land parcel No. Loc.6/Gikarangu/3634 be shared with the 3rd and 4th respondents.

3. The award having been adopted as a judgment of the court, the *ex parte* applicant is apprehensive that the judgment may be executed in favour of the 3rd and 4th respondents to his detriment (execution of the judgment will make him lose part of his land yet he has heavily invested thereon).

4. The application is opposed on the grounds that it is fatally defective, bad in law, misadvised, an afterthought and an abuse of the court process.

5. When the matter came up for hearing, counsel for the *ex parte* applicant, **Mr. Ndegwa**, relied on the pleadings filed and his list of authorities. He pointed out that the dispute preferred before the Tribunal concerned ownership of land and submitted that the Tribunal lacked jurisdiction to make the award which was subsequently adopted by the court as its judgment.

6. Counsel for the 3rd respondent, Mr. Mbuthia holding brief for Mr. Mwangi Ben, pointed out that there was a delay of about 7 years in applying for quashing of the award and reiterated the contention that the application is time barred.

7. Counsel for the 1st and 2nd respondents, despite having filed the grounds of opposition dated 11th August, 2016 and filed on the same date, informed the court that he was not opposed to the application.

8. In a rejoinder, counsel for the *ex parte* applicant, told the court that the award was adopted on 22nd April, 2016 and the current proceedings instituted on 7th June, 2016 within the time stipulated in law for bringing such an application.

Analysis and determination:

9. From the pleadings filed in this matter and the submissions in respect thereof, the issues for determination are:

i) whether the application is time barred?

ii) Subject to the outcome of (i) above, whether the applicant has made up a case for being granted the orders sought?

10. On whether the application is time barred, I adopt the decisions of the Court of Appeal in the case of **Chege Macharia v. Francis Kirimira (2015) eKLR** where it was held: -

“We are of the considered view that where, as in this case an award had been properly forwarded by the Chairman of the Tribunal but was not yet read when the Act was repealed, the proper course would have been for the magistrate to adopt the award and read it as a judgment of the court to be followed by the usual process of decree and execution and appeal where parties so desire. Such appeals would be to the High Court by dint of clause 13 of the practice direction, the Provincial Appeals Committee also having met their quietus with the repeal of the Act.”

11. And the decision in the case of **Naomi Muthoni Muniu v. Attorney General & 4 Others (2014) eKLR** where it was held:-

“37. I am however unable to agree with the Respondent and the interested party that the application was time barred. The decision of the Magistrate which is being challenged in

these proceedings was made on 28th January, 2011. These proceedings were commenced on 26th May, 2011. That was within 6 months as the law provides. It ought to be remembered that the decision of the Tribunal was incapable of being executed until adopted by the Court. Therefore, in my view the 6 months would start running from the date of the adoption of the award.

38. As was held by Khamoni, J in R vs. Chairman Land Disputes Tribunal, Kirinyaga District & Another Ex parte Kariuki [2005] 2 KLR 10:

‘The Court judgment having been entered by a Court, in law, not only was it improper but was also irregular for this notice of motion to have been filed praying for an order of certiorari to quash the decision of the Land disputes Tribunal since under section 7(2) of the Land Disputes Tribunals Act the Court enters judgment in accordance with the decision of the tribunal and upon judgment being entered a decree issues and is enforceable in the manner provided for under the Civil Procedure Act. Once such a decision is adopted by a Court, it becomes a judgment of the court thereby ceasing to exist as a decision, which can be separately quashed as contemplated in this notice of motion. What has to be dealt with now is a judgment of a court and not a decision of a tribunal just as a party would have appealed against the decision of the Provincial Land Disputes Appeals Committee and not against the decision of the Land Disputes Tribunal had the appellants’ appeal in the Provincial Land Disputes Appeals Committee been heard and determined without the existence of an intervening court judgment adopting the tribunal’s decision.’

39. I accordingly find that the application was not time barred.

40. However in light of the foregoing findings the Notice of Motion dated 21st June, 2013 is unmerited. The same consequently fails and is dismissed with costs.”

12. And also the decision in the case of Republic v. Tongaren Disputes Tribunal Comprising of Basil mukosi Makokha & 3 others (2008) eKLR where it was held:

“Once the adoption of the award takes place, unless it is set aside, the award ceases to exist in law for the purpose of quashing. Unless a person aggrieved by the award to whom judicial review is available moves to court before the award is adopted as a judgment of the court or first causes them to be set aside the judgment so entered pursuant to the award, the application for leave may be misplaced.”

13. On whether the applicant has made up a case for being granted the orders sought, from the documents annexed to the affidavit, the *ex parte* applicant swore in verification of the facts of her case, there is no doubt that by the time the Tribunal deliberated on the dispute brought before it, the *ex parte* applicant was the registered proprietor of the suit property. The question that arises from that factual situation is whether the Tribunal had power to entertain a dispute concerning registered land.

14. In answering this question, I will not re-invent the wheel but adopt the decisions in the cases cited hereunder that is to say:

a. Republic v. Chairman, Lurambi Land Dispute Tribunal & 2 others (2006) eKLR where it was held: -

“The powers vested in the tribunal under Section 3(1) of Act 18 of 1990 do not include power to determine issues of or affecting title to land. The tribunal clearly acted beyond the purview of its jurisdiction and its decision was clearly *ultra vires* its powers under Section 3(1) of the Land Disputes Tribunal Act No.18 of 1990; and

b. Mateo Githua Ngurukie vs. Hon. Attorney General and 5 Others; Nyeri High Court Civil

Suit No. 206 of 1999 where it was:-

“Over and again the Court of Appeal and High Court have held that the Land Dispute Tribunal lacks jurisdiction over registered land especially where the matter at hand touches on title of land....”

15. There being no dispute that the Tribunal had no power to hear and determine the dispute preferred before it, the same having been in respect of registered land, and being of the view that the application is not time barred and also taking into consideration that an order of *certiorari* will issue where the court is satisfied that the impugned decision was made without or in excess of jurisdiction, or where the rules of natural justice have not been complied with as held in the case of **Kenya National Examination Council V. Republic Ex parte Geoffrey Gathenji Njoroge and others**, Civil Appeal No.266 of 1996, I find and hold that the *ex parte* applicant has made up a case for being granted the orders sought. Consequently, I allow the notice of motion herein as prayed.

Dated, signed and delivered in Nyeri on this 17th day of January, 2017.

L N WAITHAKA

JUDGE

In the presence of:

Mr. Mbue Ndegwa for the *exparte* applicant

N/A by the respondents

Court clerk - Esther