



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC APPL. NO 71 OF 2009

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPEAL FOR ORDERS OF JUDICIAL
REVIEW IN THE NATURE OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 283 LAWS OF
KENYA**

AND

**IN THE MATTER OF IMENTI NORTH LAND DISPUTES TRIBUNAL CASE NO. 11 OF 2009
AND MERU SENIOR RESIDENT MAGISTRATE'S LDT NO 23 OF 2009**

AND

**IN THE MATTER OF LAND PARCEL NOS. KIBIRICHIA/GATHUINE/89 (SUBDIVIDED
INTO 49 & 89)**

BETWEEN

NKANATHA KABURIA NGARUNIAPPLICANT

VERSUS

THE CHAIRMAN LAND DISPUTES TRIBUNALRESPONDENT

IMENTI NORTH DISTRICTRESPONDENT

BEATRICE KALAYO JOSEPHINTERESTED PARTY

J U D G M E N T

1. The Amended Notice of Motion dated 7th June, 2013 but initially dated 29th October, 2009 seeks the following orders:-

(1) That an order of certiorari do issue and quash the decision of the Land Dispute Tribunal Meru Central District dated 20th May, 2009 in LDT Case No. 11 of 2009 filed and registered in the Chief Magistrate's Court as LDT NO. 23 OF 2009.

(2) That the orders of prohibition do issue to stop the implementation of the said decision of the Land Disputes Tribunal dated 20th May, 2009.

(3) That costs be provided for.

2. The Statutory statements of facts brought under Order L 111 Rules 1 (2) of the Civil Procedures Rules states as follows:

NAMES AND DESCRIPTION OF PARTIES

(1) The names of the applicants are NKANATA KABURIA NGARUNI a male Kenyan by Birth and working for gain in Imenti North District and his address of service for purposes of this suit is P.O Box 2136 Meru.

(2) The applicant is the son of M'NGARUNI KIRUE the original owner of KIBIRICHIA /KIBIRICHIA/89, latter subdivided into KIBIRICHIA/KIBIRICHIA/49 AND 89 respectively.

(3) The Respondent is the District Commissioner Imenti North-Meru being sued in his capacity as the Chairman of the Imenti North Land Disputes Tribunal.

(4) The Interested Party is a female adult Kenyan Citizen of sound mind working for gain within Imenti North District.

RELIEF SOUGHT

(1) Leave be granted to the applicant to apply for orders of judicial review in the nature of certiorari and prohibition.

(2) An order of certiorari to call and quash the decision of the Meru North Disputes Tribunal Case No. 11 of 2009 awarding Land Parcel No. KIBIRICHIA/KIBIRICHIA/89 (49) to be interested party which decision was made on 20th May 2009 and forwarded to Meru Resident Magistrates Court vide LDT Case No. 23 of 2009.

(3) Costs of this application be paid by the respondent and the interested party.

GROUND UPON WHICH RELIEF IS SOUGHT

(1) The Land Disputes Tribunal has no jurisdiction to hear and determine issues relating to the title to or possession of Land Registered under registered Land Act Cap 300 Laws of Kenya.

(2) The Land Disputes Tribunal's Decision went against express provisions of Procedural Law i.e Section 6 & 7 of the Civil Procedure Act Cap 21 Laws of Kenya

(3) The award by the Imenti North Land Disputes Tribunal in case No. 11 of 2009 and read in court vide LDT NO. 23 of 2009, is illegal and void for all purposes.

3. The Interested Party has filed a Replying Affidavit to the Notice of Motion dated 29th October, 2009 wheres he has deponed as follows:

1. THAT she is the registered owner of land Parcel No. KIBIRICHIA/GATHUINE/89 having been issued with a Title registered under cap 300 Laws of Kenya on 23rd April, 1997 measuring 0.607 Ha (Annexed copy of Title deed marked BKJ 1).

2. That the said Land Parcel had been the subject matter in Meru HCCC NO. 145 OF 1994 between MISHECK KIBITI M'IKIAO -VRS-JULIUA KAROKI NGARUNI whereafter she bought the said Land parcel through a Public Auction through M/S CLEAR REAL TRADERS AUCTIONEERS and she was declared the highest bidder for Kshs. 185,000. A certificate of sale of land was then issued on 26 August, 199. See marked annexures BKJ 3 and BKJ 4 respectively.

3. THAT thereafter she made an application to court vide HCCC NO. 145 of 1994 where she obtained orders of removal of caution dated 21st October, 1993 and inhibition dated 8th November, 1993 placed on Land Parcel No. KIBIRICHIA/GATHUINE/89 by the Applicant herein and the said orders were granted and orders issued and dated 26th February 1997 (Annexed order marked BKJ 2).

4. THAT she further presented her documents to the Lands Office to effect registration which application was approved (annexed copy marked BJK6).

5. THAT its upon removal of the caution and inhibition that she finally got registered in the Land and an entry made in the register dated 23rd April 1997.

6. THAT sometimes in August 1997, she went with her workers to the land so that they could prepare it for planting, but the Applicant in company of other people chased them away with pangas and applicant entered there and started utilizing the same.

7. THAT the Applicant has his own Land NO. KIBIRICHIA/GATHUINE/48 which borders Interested Party's land Parcel.

8. THAT when she filed her case at the LDT to wit Meru Central District Land Dispute Tribunal Case No. 11 of 2009, she sought orders of eviction as against the Applicant.

9. THAT even when the LDT case was decided, the decision was to the effect that the Applicant should vacate the suit land KIBIRICHIA/GATHURINE/89 which belongs to Interested Party with immediate effect.

10. THAT as at the time she went to the Tribunal the land was still hers for she had a Title Deed hence the applicant averment that she was granted the Land by the LDT is incorrect.

11. The Application herein cannot stand in view of the fact that when leave to file judicial review proceedings was obtained, She had already obtained a judgment in LDT NO. 23 of 2009 on 30th September, 2009 (Annexed order marked BKJ 8.)

12. That the Notice of Motion is misconceived, defective and an abuse of court process and ought to be dismissed with costs to myself.

4. The history of this case is well captured in the replying affidavit of the interested party.

5. The applicant herein was not satisfied by the decision in L.D.T.NO.11 OF 09 made by the Meru central district land Dispute Tribunal. The decision is dated 20/5/09. It was adopted as a judgment of the court as Court LDT No. 23/09 at the Chief magistrates court in Meru. Its apparent that by then, applicant had moved to the high court and had obtained leave which was to operate as a stay of the tribunals decision. The said leave was granted on 9/10/09.

6. On 4/7/13 directions were given for the motion to be canvassed by way of written submissions. The parties have since complied.

7. The applicants case is based on the following ;

i. That the tribunal had no **jurisdiction** to entertain and determine the matter. Applicant contends that the subject matter was land reference no. KIBIRICHIA/KIBIRICHIA/89 and KIBIRICHIA/KIBIRICHIA/49 and hence the tribunal had no jurisdiction to adjudicate on issues relating to Title.

ii. Principle of Res judicata and res subjudice. Applicant contends that there existed a high court matter no.145/1994 which was concluded and that the auction was in execution of the court decree.

Applicant avers that the high court matter was between the same parties and the same subject matter and hence the tribunal ought not to have entertained the dispute.

8. The interested party's case is that the dispute that was before the tribunal was a case of trespass to her parcel of land no. KIBIRICHIA GATHUINE/89. The interested party hence contends that the tribunal had jurisdiction to handle the matter. On the issue of Resjudicata, the interested party contends that the high court matter was before different parties and that she only bought the property during the auction and she there after obtained a title.

9. The respondent represented by the state counsel avers that judgment was entered in respect of the tribunals decision hence and hence what ought to have been challenged was the judgment in accordance with the civil procedure act.

10. Jurisdiction;

From annexure B.K.J 1, the interested party obtained title to parcel of land no. KIBIRICHIA/KATHUINE/89 on 23/4/1997. She approached the tribunal for redress because the applicant was trespassing on her land. During their deliberation, the tribunal visited the site and found that;

“ the objector was using the land illegally and that all the boundaries of the suit land had been removed by Nkanata Ngaruni.”

In their ruling ,the tribunal directed that “the Land Registrar is requested by the tribunal to go and mark the boundaries of the suitland because all the boundaries of the disputed land have been removed”

The findings of the tribunal with regard to their site visit is in tandem with their ruling..This is a case where the present interested party had her title. The applicant had been using the land and had apparently removed all the boundary marks. I find that the dispute fell within the mandate of the tribunal pursuant to the provisions of section 3 of the land dispute tribunals act (now repealed) where it is stated that; “all cases of a Civil nature involving a dispute as to **trespass to land** shall be determined by a tribunal.....”

11. Resjudicata/ Res subjudice.

I find no evidence to indicate that the matter was subjudice or resjudicata. True, there was a high court matter no.145/1994 where the parties were MISHECK KIBITI MI'KIAO VS JULIA KAROKI NGARUNI. The present interested party came into the picture at the point where the land was being auctioned. She bought the land and obtained her title to the land. The dispute she lodged with the tribunal was with regard to trespass upon her land by the present applicant. The arguments presented by the present applicant are therefore not correct. The matter before the tribunal was not resjudicata or resubjudice in any way.

12. The contention by the respondent that what ought to have been challenged is the judgment of the court and not the decision does not hold. This is because the judgment came to be for purpose of implementation of the decision. The decision was hence not extinguished by the fact that it was adopted as a judgment of the court.

13. In my conclusion, I find that the Judicial Review Motion is not merited. The same is dismissed with costs to the Interested Party.

DELIVERED IN OPEN COURT AT MERU THIS 10TH DAY OF MAY, 2017 IN THE PRESENCE OF:

CA: Janet

Mwiti h/b for Exparte Applicant

Kaimenyi for Interested Party Present

Kiongo for Respondent Present

HON. L.N.MBUGUA

JUDGE