



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 138 OF 2011

REPUBLIC.....

PROSECUTOR

VERSUS

**NYANDARUA WEST (OL JORO OROK) LAND DISPUTES TRIBUNAL1ST
RESPONDENT**

**NYAHURURU PRINCIPAL MAGISTRATE'S COURT.....2ND
RESPONDENT**

AND

**ELGONA KEMUNTOINTERESTED
PARTY**

EX-PARTE

MILKA WANJIRU NGURA

JUDGMENT

(Motion to quash an award of the Land Disputes Tribunal; argument that the Tribunal had no jurisdiction; dispute before the Tribunal being one to enforce a sale agreement; Tribunal had no jurisdiction over the said dispute; award and adopting decree quashed by an order of certiorari)

1. This is a judicial review motion principally seeking orders of certiorari to bring to this court and quash the decision of the Nyandarua West (Ol Joro Orok) Land Disputes Tribunal rendered in the case Land Disputes Tribunal Case No. 18 of 2011 delivered on 13 September 2011. That award was adopted by the Nyahururu Principal Magistrates' Court on 15 November 2011 and a decree passed. The ex-parte applicant also wishes to have that decree quashed. Leave to commence these proceedings was granted on 1 December 2011 and the main motion was subsequently filed on 19 December 2011. From what I can discern, the main complaint of the ex-parte applicant is that the Tribunal acted outside the powers conferred to it under the Land Disputes Tribunal Act, Act No. 18 of 1990.

2. In her supporting affidavit, the ex-parte applicant has deposed that she is the registered proprietor of the land parcel Nyandarua/OlJOROOKOK West/4677 (the suit land). The claimant before the Tribunal, who is the interested party herein, alleged to have purchased the said land from the son of the ex-parte applicant,

one Francis Mwangi Ngura Mabunya (Mwangi), who was named together with the ex-parte applicant as respondents at the Tribunal. Before the Tribunal, the interested party stated that she purchased Mwangi's share (future inheritance) in the suit land. They wrote a sale agreement and she paid Kshs. 350,000/= for it. She waited for the ex-parte applicant to transfer the land to her which did not happen. That is when she decided to take her dispute to the Tribunal.

3. At the Tribunal, the ex-parte applicant testified that the suit land is about 8 acres and that she has other sons and daughters apart from Mwangi. She stated that if the land was to be shared, Mwangi would get 1.5 acres. She had no problem with Mwangi selling his share of the land. She testified that she was ready to prepare a title deed to Mwangi and he could then transfer the land to the interested party. She was not comfortable dealing directly with the interested party as purchaser. She testified that she was aware that the interested party has purchased the land but the same would be transferred to her by Mwangi as she did not wish to encounter any complications.

4. On his part, Mwangi testified that his mother (the ex-parte applicant) shared the suit land amongst her children and he was given 1 1/4 acres. He then sold 1 acre of his portion to the interested party. He had no problem with his mother transferring this portion to the interested party.

5. After hearing the dispute, the panel of elders held that the ex-parte applicant should transfer what the interested party had purchased to her.

6. In this motion, the ex-parte applicant has contended that the Tribunal erred in dealing with a dispute touching on a contract for sale of land which contract was invalid and unenforceable in law. She has also argued that the Tribunal erred in ordering specific performance on a contract for sale of agricultural land in absence of consent of the Land Control Board as required by the Land Control Act, Cap 302, Laws of Kenya.

7. Neither the respondent nor the interested party filed anything to oppose the motion.

8. In his written submissions, Mr. Waichungo for the ex-parte applicant, submitted inter alia that the Tribunal had no jurisdiction in the matter and cited Section 3 of the Land Disputes Tribunal Act (now repealed). He submitted that the claim by the interested party fell outside the ambit of the said Section 3.

9. I have considered the matter. The core question herein is whether or not the Tribunal had jurisdiction in the suit. If it did not, then the suit herein must succeed.

10. The jurisdiction of the Land Disputes Tribunal was provided by Section 3 of the Land Disputes Tribunal Act which read 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.

11. From the above, it will be discerned that the Land Disputes Tribunals (LDTs) could only hear cases concerning division of, or determination of boundaries to land; a claim to occupy or work land; or trespass to land. What was presented before the Tribunal by the interested party was a suit to enforce a sale agreement which she had with the son of the ex-parte applicant. It is clear to me that this sort of dispute was outside the parameters of the jurisdiction of the Tribunal. In any case, what the interested party had was a sale agreement with the son of the ex-parte applicant and not the ex-parte applicant

herself. The interested party could only move to enforce that sale agreement with the seller and not the interested party.

12. That aside, the sale herein was one over agricultural land and was therefore subject to the provisions of the Land Control Act, Cap 302, Laws of Kenya. Section 6 of the said statute requires that any disposition over agricultural land must have the consent of the Land Control Board. There was no consent in the case herein and the Tribunal could not therefore enforce a sale for which no consent has been given for in doing so, they would mischievously circumvent the requirement for consent.

13. Whichever way one wants to look at it, the Tribunal could not entertain the dispute nor seek to give an order for specific performance as against the ex-parte applicant.

14. Given the above, I do allow this motion. I hereby quash, by an order of certiorari, the award of the Nyandarua West (Ol Joro Orok) Land Disputes Tribunal rendered in Land Dispute Tribunal case No. 18 of 2011. I also proceed to quash, by way of certiorari, the decree of the Principal Magistrate's Court Nyahururu, which adopted the said award, in the case Nyahururu PMCC Land Disputes Case No. 23 of 2011.

15. The costs of this suit will be shouldered by the respondents and interested party jointly and/or severally.

16. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 4th day of May 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Parties : absent

Counsels: absent

CA: Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU