



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT EMBU
ELC NO. 10 OF 2014 (J.R.)
(FORMERLY KERUGOYA ELC 44 OF 2013)

REPUBLIC.....APPLICANT

VERSUS

NJERU MIRURI.....1ST RESPONDENT

THE EVURORE LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

THE PRINCIPAL MAGISTRATE SIAKAGO COURT.....3RD RESPONDENT

EX PARTE.....ROBERT IRERI MUCHIRI

J U D G E M E N T

1. By a Notice of Motion dated and filed on 9 June 2010, the *ex parte* applicant sought the following orders:-

a) That this Honourable Court be pleased to grant orders of certiorari to remove to the High Court and quash;

i. The proceedings and award in Evurore Land Disputes Tribunal Case No. 358 of 2009.

ii. The proceedings and judgment of Award No. 8 of 2010 in the Principal Magistrate Court at Siakago.

b) That costs be provided for.

2. The said Notice of Motion was based upon several grounds the main one of which was that the proceedings and award of the said Land Disputes Tribunal were null and void since the Tribunal acted in excess or beyond its jurisdiction. It was contended that the said Tribunal had no powers to deal with matters of ownership of land registered under the Registered Land Act (now repealed). The said application was also supported by the statutory statement and verifying affidavit both dated 18 June 2010 and a supporting affidavit sworn on 9th July 2010 by the *ex parte* applicant. It was not clear, however, under what provisions of the law the supporting of 9th July 2010 was filed since it is not provided for under Order 53 of the Civil Procedure Rules.

3. According to the record, the respondents did not file any affidavits in opposition to the said application. However, the 1st respondent filed a notice of preliminary objection dated 14 February 2011 in which he challenged the competency of the application for Judicial Review. It was contended that it was incurably defective. It was also contended that the said application was not based upon any admissible evidence with respect to both the application for leave and the substantive Notice of Motion.

4. There is also on record a replying affidavit sworn and filed on 18 March 2011 by one Wilson Njira Macici who deponed that he was a member of Evurore Land Disputes Tribunal, the 2nd Respondent herein. He did not purport to swear the affidavit on behalf of the Tribunal but he claimed that the Award being challenged in these proceedings was not genuine. He swore that when they deliberated upon the case before the Tribunal it was dismissed hence the Awarded which was adopted by the Principal Magistrate's Court at Siakago was not genuine. He also deponed that the signature appearing in the award against his name was a forgery.

5. When the said application came up before me for hearing on 8 May 2017, Mr. Mogusu appeared for the *ex-parte* applicant whereas Ms Ndorongo appeared for the 1st Respondent. There was no appearance for the 2nd and 3rd Respondents. They had not entered an appearance in the proceedings. On the said date, Ms. Ndorongo informed the court that she did not wish to respond to the application for Judicial Review since it was settled in law that the Land Disputes Tribunal did not have jurisdiction to deal with title to registered land.

6. The court, nonetheless, granted the parties liberty to file and exchange written submissions on the application for Judicial review within 30 days. The court also fixed the matter for mention on 24 June 2017 for further orders. By 27 June 2017, none of the parties had filed submissions. The court consequently extended the time for filing and exchanging submissions by a further 21 days. By the time of drafting this judgment, only the *ex parte* applicant had filed submissions.

7. In my opinion, there is only one issue which arises in this application for judicial review. The issue is whether the 2nd respondent had jurisdiction to entertain the claim on registered land and to make an award thereon under the Land Disputes Tribunals Act, 1990. It is quite clear that the mandate of the 2nd respondent was restricted to three aspects which were enumerated in section 3 of the parent Act namely;

a) the division of, or determination of boundaries to land including land held in common, or

b) a claim to occupy or work land, or

c) trespass to land

8. A perusal of the 2nd respondent's award made on 11 February 2010 shows that the award required, *inter alia*, transfer of the disputed property from Mucici Girigu to the Kere clan and for the Land Registrar to undertake or effect such transfer. That was clearly outside the mandate of the Tribunal as circumscribed under section 3 of the establishing Act. It would, therefore, follow that the said award together with all consequential orders are liable to be set aside.

9. The legal position on jurisdiction of the Land Disputes Tribunals has been considered and settled in various authorities of the superior courts. The *ex parte* Applicant has in this regard relied upon the case of *Beatrice M'Marete vs Republic, District Commissioner Meru & 2 others, Nyeri Civil Appeal No. 259 of 2000.*

10. The upshot of the foregoing is that the court finds merit in the Notice Motion dated 9 July 2010 and hereby allows the same in terms of prayer No. 1 thereof. There shall be no order as to costs since the party to be faulted for exceeding jurisdiction is the 2nd respondent which is now defunct.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 5TH DAY OF OCTOBER 2017.

In the presence of Ms. Muriuki holding brief for Mr. Mogusu for the applicant and Ms. Rose Njeru holding brief for Ms. Ndorongo for the respondent. The Notice of Motion dated 9 July 2010 allowed in terms of prayer No. 1 thereof with no order as to costs.

Court Clerk Njue/Leadys

Y.M. ANGIMA

JUDGE. – 5.10.17.