



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISCELLANEOUS CIVIL APPLICATION NO. 89 OF 2005

REPUBLIC.....1ST RESPONDENT

VERSUS

THE CHAIRMAN, CHUKA LAND DISPUTE TRIBUNAL...1ST RESPONDENT

PATRICK NYAMU RINDIRI.....2ND RESPONDENT

AND

JOHN KENYA RINDIRI.....EX-PARTE APPLICANT

JUDGMENT

1. The Ex –parte Applicant moved to this Court by way of a chamber Summons filed on 19:05:05 seeking leave to bring forth Judicial Review proceedings of Certiorari and prohibition to quash the decision of Chuka Division land Dispute Tribunal Case No. 10 of 2004 and for the leave to operate as a stay.
2. The Substantive Judicial Review Motion was filed and is dated 02:08:06, whereby the Ex-Applicant avers that the Tribunal acted without jurisdiction, that the decision was against the law and is illegal and that the tribunal acted unfairly.
3. The gist of the Ex-parte Applicant’s claim is that the award dealt with the issue of land which was already registered.
4. The award was apparently adopted as a Judgment of the Court on 13.04.05.
5. During the lifespan of this case, the Court file got lost and could not be traced. A skeleton file was opened administratively on 8/9/2016.
6. The 2nd Respondent used to have an Advocate, Gituma and Co. Not anymore, however, there is an affidavit of service on record showing that 2nd Respondent was served but no response was filed.
7. Directions were taken for the matter to be heard by way of Written Submissions. The 1st Respondent and Ex-Applicant have duly filed their Submissions.
8. I have weighed all the issues raised herein. I find that the Ex-Applicant desires to have the proceedings, and decision in case No. 10/04 before the Chuka division Land Disputes Tribunal quashed. However that decision no longer exists on its own as it was adopted as a Judgment of the Court. If the Court was to grant the prayers sought for in the Notice of Motion, what would become of the Judgment and the decree?

9. I am in agreement with 1st Respondent's Submission that "where a decision of the tribunal has been adopted by a Court of law, the former is subsumed into the latter and the former ceases to exist with the result that the only decision that can be quashed is the Magistrate's adaptive decision". See **Republic vs Mwangi Nguyai & 3 others Ex parte Haru Nguyai (2013) e KLR and RV Chairman land Disputes Tribunal Kirinyaga District & Another Ex- parte Kariuki (2005) 7 KLR 10.**

10. The Ex Parte Applicant hence ought to have included the Judgment of the Magistrate's court in his main prayers.

11. In the circumstances the motion fails. The same is dismissed with costs to 1st Respondent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13th DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-

Court Assistant: Janet

Kithinji H/B for Murango Mwenda for Ex parte Applicant present

Kiango for Respondents present

Patrick Nyamu Rindiri Absent

HON. L. N. MBUGUA

ELC JUDGE