



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO. 32 OF 2009

REPUBLICAPPLICANT

VERSUS

**LAIKIPIA WEST RUMURUTI DIVISION LAND DISPUTES TRIBUNA.....
RESPONDENT**

AND

PETER KIMANI NJENGA.....INTERESTED PARTY

EX-PARTE MARY NJERI KABUKI

PAUL MUGANE KABUKI (being administrators of estate of JOSPHAT KABUKI MWANGI)

JUDGMENT

(Application to quash award of Land Disputes Tribunal; dispute before the tribunal being on ownership of land; Tribunal not having jurisdiction to hear such disputes; application allowed; order of certiorari issued).

1. This is a judicial review motion seeking orders of certiorari to bring into this court and have quashed the proceedings and award of the Laikipia West Rumuruti Division Land Disputes Tribunal in respect of Tribunal Case No. 29 of 2007. The grounds upon which the order is sought are :-

- i. *That the Tribunal had no jurisdiction to arbitrate the dispute.*
- ii. *That the subject matter of the dispute was Marmaret/Rumuruti North Block 2/287 (Ndurumo) registered in the name of Josphat Kabuki Mwangi (deceased).*
- iii. *That the tribunal heard a dispute when there was no respondent, the purported respondent having died prior to that date.*
- iv. *That the applicants will suffer irreparable loss if the Tribunal's award is not quashed as they have been ordered to transfer their land to the Interested Parties.*
- v. *That no prejudice will be caused to the respondent if the orders sought are granted.*

2. The motion is supported by the affidavit and further affidavit of Paul Mugane Kabuki. I have looked at the award which is sought to be quashed. It was delivered on 21 August 2008. The claimant before the Tribunal was the Interested Party herein. The respondent is noted as Josphat Kabuki Mwangi (Deceased). The award is pretty brief. It provides as follows where relevant :-

“The land Marmanet/North Rumuruti Block 2/287 (Ndurumo) approx. 1.925 Ha belong (sic) to Peter Kimani Njenga and not to Josphat Kabuki Mwangi...”.

3. No response was filed by the respondent to this motion. The Interested Party however filed a Replying Affidavit. He deposed inter alia that the land parcel Marmanet/North Rumuruti Block 2/287 (Ndurumo) (hereinafter the suit property) belongs to him, having purchased it from one Francis Weru Gichubi on 17 August 1988. He averred that the deceased conspired with one Mugo to take over the land fraudulently and proceeded to procure the title deed without his consent. He stated that he sued the 2nd ex-parte applicant before the Tribunal because he had informed him that he is the administrator of the estate of his father and that he participated in the proceedings.

4. I do not have the benefit of the proceedings but it appears that the dispute was over who between the Interested Party and the deceased should own the land. That to me was a dispute that was outside the jurisdiction of the Tribunal whose jurisdiction was provided for in Section 3 (3) of the Land Disputes Tribunal Act, CAP 303, Laws of Kenya (now repealed by the Environment and Land Court Act, 2011). The said provision was drawn 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.

5. It will be noted from the above that the jurisdiction of the Land Disputes Tribunals (LDTs) was quite limited. They could only hear disputes related to the division of land, determination of boundaries to land, claims to occupy or work land, and trespass to land. The dispute that was presented in the matter herein did not fall within the confines of the above. It was clearly a dispute over who should be the owner of certain land, which dispute, the Land Disputes Tribunal did not have jurisdiction over. I also wonder how the Tribunal could have proceeded to hear a dispute where the respondent is deceased and there was no indication of a personal representative being present. Although the Interested Party stated that there the 2nd ex-parte applicant had informed him that he was the representative of the Estate of his father, there was no such evidence.

6. Having been made outside the parameters of jurisdiction of the Land Disputes Tribunal Act, I have little option but to quash the award. It is hereby quashed. The Interested Party is advised to seek other avenues for legal redress.

7. As to costs, I award the same to the ex-parte applicants but only against the respondent.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 17th day of May, 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Kirui for respondent interested party acting in person.

No appearance on part of M/s Mirugi Kariuki and Company for ex-parte applicants

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU