



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NAKURU

JUDICIAL REVIEW NO. 85 OF 2011

REPUBLIC.....APPLICANT

-VERSUS-

CHIEF MAGISTRATE COURT OF NAKURU.....RESPONDENT

EX-PARTE CHARLES NJIHIA NGANGA

-AND-

SAMUEL ARAMA T/A ORTAMA GENERAL SUPPLIERS ...INTERESTED PARTY

JUDGMENT

(Judicial review to quash proceedings before the Magistrates' Court; dispute before the Magistrate's Court relating to land which was valued at least in the sum of Kshs. 7,700,000/=; whether Magistrate had the requisite pecuniary jurisdiction; land registered under the Registered Land Act; Jurisdiction of Magistrates Courts under the Registered Land Act was only for subject matter not exceeding Kshs. 500,000/=; proceedings clearly out of jurisdiction of Magistrates Courts; order of certiorari issued; proceedings quashed and struck out with costs)

1. This is a judicial review motion seeking the following orders;-

(i) An order of certiorari to remove to this court and quash the entire suit and/or the entire proceedings and orders and in particular the orders dated 14 March 2011 in Nakuru Chief Magistrate's Court Civil Suit No. 135 of 2011, Samuel Arama T/A Ortama General Suppliers vs Charles Nganga Njihia.

(ii) An order of Prohibitino to prohibit the Nakuru Chief Magistrate's Court from proceeding with or taking any further proceedings whatsoever in the said case i.e Nakuru Chief Magistrate's Court Civil Suit No. 135 of 2011, Samuel Arama T/A Ortama General Suppliers vs Charles Nganga Njihia.

2. Leave to commence the judicial review proceedings was granted on 25 July 2011 and the main motion was filed on 4 August 2011. There are several grounds raised in support of the motion but I think the main reason is that the trial Magistrate handled a matter in which he had no jurisdiction. It is averred that the subject matter in the case before the Magistrate's Court is a property worth in excess of Kshs. 20 Million. This property was purchased in a public auction at the sum of Kshs. 7.7 Million. It is contended that the trial Magistrate could only handle a matter not in excess of Kshs. 2 Million. The motion is opposed and before I delve into these, a brief background on the matter would be useful.

3. It will be observed that the ex-parte applicant wishes to have quashed the proceedings in Nakuru CMCC No. 135 of 2011. That case was filed by the interested party against the ex-parte applicant. It was commenced by way of plaint filed on 8 March 2011. In the said suit, the interested party, as plaintiff, pleaded that he purchased the land parcel Nakuru Municipality Block 18/26 at a public auction but that the defendant has refused to vacate the property. In the suit, he asked inter alia for an order of eviction. Together with the suit, the interested party filed an application for injunction which was dated 7 March 2011, seeking to restrain the ex-parte applicant from the said property and to have him ejected pending hearing and determination of the suit. He first appeared before the trial Magistrate ex-parte and the orders were granted on 14 March 2011. On 23 March 2011, the ex-parte applicant filed an application seeking to stay the orders issued on 14 March 2011. Inter alia it was raised in the application that the court did not have jurisdiction. That application of the ex-parte applicant was dismissed on 11 July 2011. On the question of pecuniary jurisdiction raised, the court was of the view that orders sought do not have a bearing on the value of the subject matter. It is after the dismissal of his application that the ex-parte applicant filed this case for relief.

4. In this motion, the ex-parte applicant has among other things, argued that there was no public auction held and that the Honourable J. Njoroge, Principal Magistrate, did not have the requisite pecuniary jurisdiction to handle the matter as his jurisdiction is only of Kshs. 2 Million.

5. In his replying affidavit sworn on 25 November 2011 and a further replying affidavit sworn on 22 February 2011, the interested party, has inter alia deposed that he is the legal owner of the suit property having purchased it a public auction on 20 August 2010. He has deposed that he was the highest bidder at Kshs. 7.7 Million. He further deposed that the property at the time of suit was valued at Kshs. 13 Million and not Kshs. 20 Million as claimed by the ex-parte applicant. He has deposed that the question of the Magistrate having the requisite pecuniary jurisdiction was raised and a merited ruling delivered. He has averred that the Hon. J. Njoroge did not act ultra vires and had jurisdiction to handle the matter.

6. I have not seen any response filed by the respondent through the State Law Office.

7. I invited counsels to file submissions which they duly did save for counsel for the interested party. I have taken into account these submissions. Basically counsel for the ex-parte applicant has argued that the Hon J. Njoroge did not have jurisdiction whereas counsel for the respondent argued that the case is one of ownership of property and issuing orders of certiorari will not cure the suit . He submitted that the court should be accorded opportunity to hear witnesses and evaluate the documentary evidence which cannot be done in a judicial review. He submitted that the applicant should be referred to this court for a trial on the issue of ownership.

8. I have considered the matter. The core question is whether or not the Magistrate, the Hon. J. Njoroge had jurisdiction to handle the suit that was before him. The key factor is whether the registration statute allowed the Magistrate to handle the matter.

9. I have taken note that the property is one that is registered under the Registered Land Act (now repealed by the Land Registration Act, 2012). The court that was mandated to hear disputes over property registered under the Registered Land Act was the High Court, but the Magistrates' Courts could handle disputes over such properties if the subject matter of the case was one not exceeding the sum of Kshs. 500,000/=. This was outlined in Section 159 of the Registered Land Act which provided as follows :-

159. Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act.

10. It will be observed that the Court with uncontested jurisdiction was the High Court but where the

value of the subject matter did not exceed 25,000 pounds, which is the equivalent of Kshs. 500,000/=, the dispute could be handled by the Magistrates' Court, unless it was a matter falling within the jurisdiction of the Land Disputes Tribunal. Thus, it was the duty of every Magistrate's Court to ensure that the value of the subject matter before the court did not exceed Kshs. 500,000/=. If it did, then the Magistrate's Court would have no jurisdiction. The individual jurisdiction of a Magistrate, was not important. Even where the individual Magistrate had an enhanced pecuniary jurisdiction, which at the time went upto Kshs. 7,000,000/=, this was not relevant. So long as the value of the subject matter exceeded Kshs. 500,000/= the dispute was outside the ambit of the Magistrates' Court. The issue was well discussed in the case of ***Tabitha Wambui Munyao & Others vs Peter Ngugi Kainamia, Nakuru ELC Civil Appeal No. 13 of 2014, (2015) eKLR***, where it was held that the test to be applied was the test of the Registered Land Act and not that of the Magistrates Court Act, for under Section 10 of the Magistrates Court Act, CAP 10, Laws of Kenya (now repealed by the new Magistrates Court Act, 2015) the said statute was subject to other written law, and the Registered Land Act, was other written law.

11. In our case, the value of the subject matter, though not agreed by the parties, is at least Kshs. 7,700,000/= for that was the price allegedly tendered at the auction. The value of the subject matter was far in excess of Kshs. 500,000/= and therefore the dispute was beyond the jurisdiction of the Magistrates' Court. I observe that the Magistrate before whom the dispute was before, was of the view that the prayers sought did not touch on pecuniary jurisdiction. This was a wrong approach. What was important was not the nature of prayers sought. It was the value of the subject matter, and the value of the subject matter is the value of the property before the court. It therefore did not matter whether the plaintiff was asking for eviction, or a declaration of trespass, or for injunction. The prayers were not important. It is the value which was important and the value certainly did exceed that which the Magistrate's Court was permitted to handle.

12. It is clear to me that the Hon. J. Njoroge, Principal Magistrate, did not have jurisdiction in the matter. Having not had jurisdiction, the whole proceedings are hereby declared to be null and void. I do not hesitate to bring those proceedings before this court and to proceed and quash them. I also issue an order of prohibition, prohibiting the Magistrates' Court from handling the said suit saves for costs or other process of execution on costs. All orders issued by the Honourable Magistrate are also hereby vacated. With the utility of my discretion, I order the said suit to be struck out with costs to the ex-parte applicant who was the defendant in the said suit. The ex-parte applicant shall also have the costs of this suit jointly and/or severally against the respondent and interested party.

13. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 20th day of July, 2016

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

In presence of: -

Ms. Ngere holding brief for Mrs. Magana for ex-parte applicant.

No appearance for respondent and interested party.

Court Assistant: Janet.

MUNYAO SILA

JUDGE

