



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NYERI

ELC JR NO. 5 OF 2015

JOSEPH KIRUGU NJUGUNA APPLICANT

-VERSUS-

LAND DISTRICT TRIBUNAL MARAGUA..... 1ST RESPONDENT

CHIEF MAGISTRATE COURT MURANG'A..... 2ND RESPONDENT

AND

VIRGINIA NJOKI NJUGUNA INTERESTED PARTY

RULING

1. Pursuant to leave granted to the ex parte applicant on 22nd September, 2015 to institute judicial review proceedings, the *ex parte* applicant, **Joseph Kiragu Njuguna**, filed the notice of motion dated **23rd September, 2015** seeking:-

1. An order of prohibition to prohibit the Chief Magistrates Court Murang'a from hearing or entertaining any further proceedings or issuing any further orders in Land Disputes Case No.93 of 2001 Murang'a and Maragua Land Dispute Tribunal from entertaining similar proceedings affecting title of land and ownership of L.R LOC.2/Makomboki/1083.

2. An order of *certiorari* to remove to this court and quash the proceedings and award of Maragua Land Dispute Tribunal in respect of LR LOC.2 Makomboki/1083 or the award in Land Dispute Tribunal Case Number 93 of 2001 at Murang'a to be adopted on 25th september, 2015.

3. Costs of the application.

2. The *ex parte* applicant *inter alia*, contends that being the registered proprietor of the suit property, he holds it to the exclusion of all other persons; that the award in favour of the interested party is irregular, unprocedural and illegal because it was made ultra vires the power of the Tribunal and that the award in as far as it required him to surrender a portion of the suit property to the interested party is not only illegal but prejudicial to his interests in the suit property.

3. In reply and opposition to the application, the interested party, **William Mburu Mungai**, through the affidavit he swore on **13th July, 2010** has, *inter alia*, deposed that the *ex parte* applicant was registered as the owner of the suit property in trust for them (himself and the other children of Simon Mungai

Mutiti (deceased)). He explains that he lodged his claim in respect of the suit property to the Tribunal because the *ex parte* applicant had failed to give him his share of the suit property yet she was merely a trustee in respect thereof. He further explains that his claim to the Tribunal was based on his customary law right to benefit from the estate of his deceased parents. He contends that the award was issued under the Land Disputes Tribunals Act and confirmed by court as by law required.

4. The interested party also filed grounds of opposition of even date in which he contends that the application is scandalous, frivolous, vexatious, a delaying tactic and otherwise an abuse of the process of the court.

5. On behalf of the 1st and the 2nd respondents, the Attorney General filed grounds of opposition dated **19th October, 2010**. Those grounds of opposition were, however, withdrawn on 15th June, 2015 when the matter came up for hearing. For that reason I will say no more about those grounds of opposition.

6. When the matter came up for hearing, counsel for the *ex parte* applicant, **Mr. Mwaniki**, reiterated the contention that the decision of the Tribunal was *ultra vires* its powers under the **Section 3** of the Land Disputes Tribunals Act. In this regard, he submitted that the Tribunal had no power to order the subdivision of land with title (registered land). He further submitted that the award had the effect of revoking the grant issued to the *ex parte* applicant in Nairobi High Court Succession Cause No. 1662 of 1992 which he contends was highly irregular.

7. Counsel for the 1st and 2nd respondent, **Mr. Makori**, supported the application. He submitted that the award raises issues of ownership of a parcel of land which falls outside the mandate of the Tribunal.

8. Concerning the interested party's contention that he is entitled to the suit property on account of the alleged trust relationship between him and the *ex parte* applicant, he submitted that the Tribunal had no power to determine that issue under **Section 3** of the Land Dispute Tribunals Act.

9. On his part, the interested party stated that when he took the dispute to the Defunct Land Disputes Tribunal he believed it had power to make the decision it made. He urged the court to uphold the Tribunal's decision.

Analysis and determination:

10. From the documents annexed to the affidavit the *ex parte* applicant swore in verification of the facts of her case, there is no doubt that by the time the Tribunal deliberated on the dispute brought before it, the *ex parte* applicant was the registered proprietor of the suit property. The question that arises from that factual situation is whether the Tribunal had power to entertain a dispute concerning registered land.

11. In answering this question, I will not re-invent the wheel but adopt the decision in the case of **Republic v. Chairman, Lurambi Land Dispute Tribunal & 2 others (2006) eKLR** where it was held:-

“The powers vested in the tribunal under section 3(1) of Act 18 of 1990 do not include power to determine issues of or affecting title to land. The tribunal clearly acted beyond the purview of its jurisdiction and its decision was clearly *ultra vires* its powers under Section 3(1) of the Land Disputes Tribunal Act No.18 of 1990.

12. Similar sentiments concerning the jurisdiction of the defunct Land Disputes Tribunal were expressed in the case of **Mateo Githua Ngurukie vs. Hon. Attorney General and 5 Others; Nyeri High Court Civil Suit No. 206 of 1999** where **Ombwayo J.**, stated:-

“Over and again the Court of Appeal and High Court have held that the Land Dispute Tribunal lacks jurisdiction over registered land especially where the matter at hand touches on title of land....”

13. On whether the applicant has made up a case for issuance of the orders sought, it is trite law that an order of *certiorari* will issue where the court is satisfied that the impugned decision was made without or in excess of jurisdiction, or where the rules of natural justice have not been complied with. See **Kenya National Examination Council V Republic Ex parte Geoffrey Gathenji Njoroge and others**, Civil Appeal No.266 of 1996.

14. There being no dispute that the Tribunal had no power to hear and determine the dispute preferred before it; the same having been in respect of registered land, I am satisfied that the *ex parte* applicant has made up a case for issuance of an order of Certiorari to remove to this court and to quash the impugned award and any consequential orders in respect thereof.

15. As the interested party genuinely believed that the Tribunal had power to entertain the dispute he preferred before it, I direct that each party bear their own costs for the application.

16. The upshot of the foregoing is that the application has merit and is allowed as prayed.

Dated, signed and delivered at Nyeri this 11th day of October, 2016.

L N WAITHAKA

JUDGE

In the presence of:

Ms Wanjira h/b for Mr. Mugo Moses for the applicant

No appearance for the interested party

court clerk - Lydia