



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO 51 OF 2012

REPUBLICAPPLICANT

VERSUS

NORTH KINANGOP LAND TRIBUNAL ...1ST RESPONDENT

SENIOR PRINCIPAL MAGISTRATE'S

COURT NYAHURURU.....2ND RESPONDENT

AND

MARY WAIRIMU GITAUINTERESTED PARTY

EX-PARTE

DAVID MUTHEE MBURU

RULING

(Judicial Review application for certiorari to quash decree arising out of a decision of the Land Disputes Tribunal; tribunal not having jurisdiction; award of tribunal adopted as decree; decree quashed)

1. This is a judicial review application seeking orders of certiorari to quash the decree issued on 26 July 2012 in Nyahururu Principal Magistrate's Court, Land Disputes Case No. 15 of 2012 whereby the decision of the North Kinangop Land Disputes Tribunal in case No. 30 of 2006 was adopted. The core reason for the application is that the North Kinangop Land Disputes Tribunal (the tribunal), had no jurisdiction to try the matter.

2. The dispute before the Tribunal was originated by Mary Wairimu Gitau, the interested party. Her complaint before the tribunal was that she contributed Kshs. 20,000/= towards the purchase of the land parcel Nyandarua/Nyandarasi/1031 (the suit land) which land is registered in the name of the ex-parte applicant. Owing to this alleged contribution, she contended that she is entitled to 1/4 acre of the suit land. In its award, the tribunal ordered the ex-parte applicant to subdivide the suit land and transfer a portion of 1/4 acre to the interested party. The award was made on 15 September 2006. For reasons which I do not know, the award was forwarded to the Nyahururu Principal Magistrate's Court in the year 2012, 6 years after the award. The award was adopted on 26 July 2012 and a decree was duly issued. Aggrieved by the

decree, the applicant sought leave to commence judicial review proceedings, which leave was granted on 17 August 2012.

3. The argument of the ex-parte applicant is that the award was made out of jurisdiction and therefore the decree ought to be quashed.

4. The interested party did not file any papers in these proceedings. The State Law Office entered appearance for the respondent but did not file any papers to oppose the application. On the date of the hearing of the application, Ms. Khatambi for the respondent, stated that they do not wish to oppose the motion as it was their view that the tribunal was in excess of jurisdiction.

5. I have considered the matter. The jurisdiction of the Land Dispute Tribunals was provided by Section 3 of the Land Disputes Tribunal Act (CAP 303) (now repealed by the Environment and Land Court Act, Act No. 19 of 2011). The same 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.*

6. It will be seen from the above, that the jurisdiction of the Tribunal, was only on matters related to the division or determination of boundaries; claims to occupy or work land; and trespass to land. The Land Disputes Tribunal did not have jurisdiction to issue declaratory orders on the ownership of land and neither did it have jurisdiction to determine disputes revolving around ownership of land. Neither could it have had jurisdiction to direct that land be subdivided so that another person could become proprietor of one of the subdivided parcels. In my opinion, the tribunal was out of jurisdiction and the subsequent decree cannot be allowed to stand.

7. I do not think it is necessary for me to say more, particularly given the fact that the State Law Office for the respondent, has conceded to this Motion. I allow the application herein and quash the decree in Nyahururu Land Disputes Tribunal Case No. 51 of 2012.

8. As to costs, in my discretion, each party will bear his/her own costs.

It is so ordered.

Dated, signed and delivered in open court at Nakuru this 13rd Day of May 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of -: