



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NYERI

ELC JR NO. 6 OF 2014

(FORMERLY NYERI HC MISC. CIVIL APPLICATION

NO. 37 OF 2010)

IN THE MATTER OF:

APPLICATION FOR ORDERS OF JUDICIAL REVIEW

AND

IN THE MATTER OF:

THE LAND DISPUTES TRIBUNALS ACT NO. 18 OF 1990 (REPEALED)

AND

IN THE MATTER OF:

THE REGISTERED LAND ACT CAP. 300 LAWS OF KENYA

AND

IN THE MATTER OF:

THE PROCEEDINGS IN THE MAKUYU LAND DISPUTES TRIBUNAL CASE NO. 102 OF

2009

AND

IN THE MATTER OF:

THE PROCEEDINGS IN

MURANG'A PRINCIPAL MAGISTRATE'S COURT

LAND DISPUTE CASE NO. 8 OF 2010

REPUBLIC APPLICANT

-VERSUS-

THE CHAIRMAN MAKUYU LAND DISPUTES TRIBUNAL1ST RESPONDENT

THE PRINCIPAL MAGISTRATE MURANG LAW COURTS2ND RESPONDENT

WILLIAM MBURU MUNGAI INTERESTED PARTY

EX PARTE

BETHA WANJIRU MUNGAI

RULING

1. Pursuant to leave granted on 26th April, 2010 to apply for *certiorari*, the ex parte applicant **Beth Wanjiru Mungai**, brought the notice of motion dated **28th April, 2010** seeking an order of *certiorari* to remove to this court for purposes of being quashed the award of the Makuyu Land Disputes Tribunal award made on 1st December, 2010 in Makuyu Land Disputes case No.102 of 2009 and the proceedings in Murang'a Principal Magistrate's Court Land Disputes Tribunal Case No.8 of 2010 in respect of Land parcel No. **Loc 17/SabaSaba/1322** .

2. The *ex parte* applicant *inter alia* contends that the Tribunal did not have jurisdiction to entertain the issues placed before it. In particular, the *ex parte* applicant contends that the Tribunal by arbitrating on matters pertaining to title obtained under the Registered Land Act, Cap 300 Laws of Kenya (now repealed), exceeded its powers under the Land Disputes Tribunals Act, No. 18 of 1990; that the award had the effect of revoking a confirmed grant issued to her in respect of the suit property and that since the award was void *ab initio* the proceedings of the Principal Magistrate's Court cannot be countenanced.

3. In the affidavit which the *ex parte* applicant swore in support of the application, she has reiterated the foregoing grounds and annexed a certificate of search in respect of the suit property which confirms that the property was registered in her name on 30th December, 2008 way before the impugned award was made.

4. 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.

5. The interested party also filed grounds of opposition of an 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.

6. 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 concerning those grounds of opposition.

7. 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 **Section 3** of the

Land Disputes Tribunals Act (repealed). In this regard, he submitted that the Tribunal had no power to order the sub-division 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.

8. 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.

9. 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 (repealed).

10. 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:

11. 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.

12. 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.

13. 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...”

14. 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 See **Kenya National Examination Council V. Republic Ex parte Geoffrey Gathenji Njoroge and others**, Civil Appeal No.266 of 1996.

15. 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.

16. 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 of the application.

17. The upshot of the foregoing is that the application has merit and is allowed in terms of prayer (1).

Dated, signed and delivered at Nyeri this 29th day of September, 2015.

L N WAITHAKA

JUDGE.

In the presence of:

MS Masaka h/b for Mr. Makori for the respondent

N/A for the applicant

William Mburu Mungai the interested party

Court assistant - Lydia