



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
LAND AND ENVIRONMENT COURT

JR. 62 OF 2011

LEONARD RIUNGU.....1ST APPLICANT

FRANKLINE KIRIMI.....2ND APPLICANT

VERSUS

DISTRICT COMMISSIONER MAARA1ST RESPONDENT

THE HON. ATTORNEY GENERAL.....2ND RESPONDENT

M'RACHI NJERU.....INTERESTED PARTY

R U L I N G

This ruling concerns a Preliminary Objection on Points of Law dated 13th day of November, 2014 filed by the Interested Party. The Preliminary Objection (PO) has the following grounds:

1. *That the exparte Chamber Summons is incompetent and offends the express provisions of Order 53 of the Civil Procedure Act.*
2. *That the failure to challenge the Principal Magistrate's decision in LDT No. 32 of 2011 renders the entire application fatally defective in accordance to the holding in Republic Versus Chairman Land Disputes Tribunal, Kirinyaga District and Another Exparte Kariuki.*
3. *That the Land Disputes Tribunal in Maara Land Disputes Tribunal Case No. 3 of 2011 ceased to exist as a separate and independent decision.*
4. *That once the Land Disputes Tribunal decision in Maara Land Disputes Tribunal Case No. 3 of 2011 was read and adopted as a Court decision in LDT No. 32 of 2011 the same ceased to exist as an independent decision capable of being challenged and/or quashed separately.*
5. *The ex-parte's application is incompetent, frivolous and an abuse of the Court process.*

The Chamber Summons which is being challenged is dated 11th August, 2011 and had prayers for orders that:

1. *This Honourable Court be pleased to certify the application annexed hereto as urgent and the same be heard during the vacation.*

2. ***That this summons be heard contemporaneously with the Chamber Summons dated 11.8.2011.***

3. ***Cost in cause.***

The application is buttressed by the annexed affidavit of **BASILIO GITONGA**, advocate and has the following grounds:

a) **That unless this application is heard and determined during the vacation, the statutory period of 30 days right of appeal reserved for the applicant will expire before the High Court vacation ends and the award of the Tribunal being challenged will be implemented.**

b) **The 30 days right of appeal will expire on 27th August, 2011 since the award was read on 27.7.2011.**

The Exparte Chamber Summons which sought leave is dated 11th August, 2011 and seeks orders that:

1. **This application be certified urgent, service therefore be dispensed with in the first instance and the same be heard on priority basis.**
2. **The applicant be granted leave to apply for judicial review in the nature of certiorari for this Honourable Court to call in itself and quash the entire proceedings and award of the Maara Land Disputes Tribunal filed in Court on 30.6.2011 and read in Chuka Principal Magistrate's Court on 26.7.2011 vide LDT No.32 of 2011.**
3. **That the grant of such leave do operate as stay of execution/implementation of the said award as read before the Chuka Principal Magistrate's Court in LDT No. 32 of 2011 pending hearing of the substantive notice of motion.**
4. **Costs of this application be in the main motion.**
5. **The Court do make any other or such better orders which this Honourable Court may deem fit to grant.**

The Exparte Chamber Summons dated 11th August, 2014 was heard by the Hon. Lady Justice Mary Kasango, Judge, on 24th August, 2011. Leave to institute Judicial review proceedings was granted. An order was also granted that the leave do operate as stay of execution/implementation of the award read by the Chuka Principal Magistrate's Court on 26.7.2011 in LDT No. 32 of 2011 pending the hearing of the substantive motion.

The Interested Party has filed extensive submissions, which have annexed as an authority the case of Republic Versus Chairman Land Disputes Tribunal, Kirinyaga District Tribunal and Another Exparte Kariuiki. Mr. Kiongo, Litigation Counsel for the Attorney General has filed written submissions. He, however, submitted on the main motion dated 9th September, 2011, which was filed after leave had been granted by the Hon. Lady Justice, M. Kasango, Judge, on 24th August, 2011. He has not made submissions regarding the Preliminary Objection which is the subject of this ruling.

Mr. Basilio Gitonga, for the Exparte Applicant has made extensive submissions in opposition to the Preliminary Objection. He has cited a plethora of cases in Support of his position that the Preliminary objection should be dismissed.

I have considered the respective positions of the parties and the authorities they have proffered in support of their positions. As I have already noted, the submissions by the respondents are not relevant to the issues raised by the Preliminary Objection.

I will not go into the merits of the parties' submission for the following reasons:

1. Leave was granted by the Hon. Lady Justice M. Kasango, J, on 24th August, 2011, over 4 years ago and an order was granted for that leave to operate as stay of execution/implementation of the challenged award pending the hearing of the substantive motion. The substantive motion has not been heard. I opine that I can not by mere sleight of hand merely buttressed by the Preliminary Objection set aside an order issued by a judgment whose jurisdiction is horizontal to mine.
2. All the five grounds in the Preliminary Objection invite arguments, thus questioning their veracity as pure points of law.

In the circumstances, I dismiss the notice of Preliminary Objection. Costs are to be in the cause.

I advise the parties involved in this suit to move diligently and facilitate the expeditious hearing of this judicial review suit.

Delivered in Open Court at Meru this 22nd day of September, 2015 in the presence of :

Cc. Daniel/Lilian

Mutegi for Exparte Applicant

Karuti holding brief for B.Gitonga for Interested Party

Kieti present for 1st Respondent

P. M. NJOROGE

JUDGE