



**REPUBLIC OF KENYA**

**High Court at Kerugoya**

**Judicial Review 6 of 2012**

**BONIFACE KIRWERE NJOGU .....EXPARTE APPLICANT**

**VERSUS**

**THE DISTRICT LAND DISPUTE TRIBUNAL & 2 OTHERS.....RESPONDENT**

**JUDGMENT**

This is in respect of the Notice of Motion filed by the Ex-parte applicant BONIFACE KIRWERE NJOGU on 24<sup>th</sup> June 2011 upon obtaining leave on 20<sup>th</sup> June 2011 seeking orders to quash the award of the Kirinyaga South District Land Dispute Tribunal in case No. MWEA CON LND 8/2 VOL IV/7 dated 3<sup>rd</sup> March, 2011 and the subsequent decree of the Senior Resident Magistrate's Court at Wang'uru adopting the said award as the judgment of the court on 5<sup>th</sup> May, 2011 vide Wang'uru Senior Resident Magistrate's Arbitration case No. 7 of 2011 and quash the said decree.

The application was opposed by the Attorney General acting on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondent and also by the 3<sup>rd</sup> respondent.

Briefly, the ex-parte applicant is the registered owner of the parcel of land No. MWEA/TEBERE/B/1297 measuring 6.59 Hectares and which title was issued to him on 20/2/1997 being a resultant portion from L.R. MWEA/TEBERE/B/4 which was a first registration title issued to him on 24<sup>th</sup> February 1965 and which original title he sub-divided into four portions on 20<sup>th</sup> February, 1997 one of which is MWEA/TEBERE/1297. The 3<sup>rd</sup> respondent is the brother of the ex-parte applicant and on 19<sup>th</sup> January 2011 he, (3<sup>rd</sup> respondent), filed a dispute at the Kirinyaga South District Land Dispute Tribunal in respect of the said L.R. MWEA/TEBERE/B/1297 and the Tribunal made an award in his favour to the effect that the dispute property be subdivided and a portion of 4.0 Acres be carved out and transferred to the 3<sup>rd</sup> respondent. This award of the Tribunal was adopted and made a decree of the Senior Resident Magistrate's Court at Wang'uru in Arbitration Case No. 7 of 2011 dated 5<sup>th</sup> May 2011. the Ex-parte applicant immediately moved to court to quash the Tribunal's award and the resultant decree as being null and void since the Tribunal acted beyond their jurisdiction in ordering that his property L.R. MWEA/TEBERE/B/1297 be sub-divided and a portion of 4.0 Acres be transferred to the 3<sup>rd</sup> respondent.

Submissions have been made by Mr. Kahigah for the Ex-parte applicant and Mr. Njuki for the 3<sup>rd</sup> respondent. I have considered the submissions together with the record herein.

It is common knowledge that the dispute between the Ex-parte applicant and the 3<sup>rd</sup> respondent involved ownership of a parcel of land known as MWEA/TEBERE/B/1297 which is registered in the

names of the Ex-parte applicant and the Kirinyaga South District Land Disputes Tribunal made an order dated 3<sup>rd</sup> March 2011 that the Ex-parte applicant do transfer four (4) Acres of the said land to the 3<sup>rd</sup> respondent and also proceeded to order the District Land Registrar and District Land Surveyor to curve the four (4) Acres from MWEA/TEBERE/B/1297 and register it in the 3<sup>rd</sup> respondent's names.

In arriving at its decision, the Kirinyaga South District Land Dispute Tribunal was acting under the then Land Disputes Tribunal Act No. 18 of 1990 (now repealed). Under Section 3 of that Act, the powers of the Tribunal with regard to land disputes were limited as follow:-

- ***The division of or the determination of boundaries to land including land held in common.***
- ***A claim to occupy or work land or***
- ***Trespass to land.***

It is therefore clear from the above that a Land Dispute Tribunal established under the then Land Disputes Tribunal Act had no jurisdiction to hear and determine a dispute relating to title to land. The High Court has said so severally – see **WAMWEA VS CATHOLIC DIOCESE OF MURANGA 2003 K.L.R. 389, GICHINGIRI VS GICHINGIRI H.C. CIVIL APPEAL NO. 3 OF 2009 (NYERI), KANGI VS NJOGU H.C. CIVIL APPEAL NO. 50 OF 2007 (NYERI)** and many others.

Therefore, the dispute herein having been one over the ownership of the property known as MWEA/TEBERE/B/1297, the Kirinyaga South District Land Disputes Tribunal had no jurisdiction to determine it and make the order that it did which included an order that the District Land Registrar and District Land Surveyor do curve four Acres from the dispute land and register it in the names of the plaintiff in the case before it i.e. Pius Mugo Njogu the 3<sup>rd</sup> respondent in this application. The jurisdiction to make such orders belonged to the court by virtue of **Section 159 of the repealed Registered Land Act** and **Section 80 of the new Land Registration Act**. Therefore the Kirinyaga South District Land Disputes Tribunal acted beyond its jurisdiction by making the award that it did and similarly the decree of the Senior Resident Magistrate's Court at Wang'uru confirming that award was clearly an order that was ultra vires and a nullity and therefore amenable to judicial review.

Accordingly, therefore, I find that the 1<sup>st</sup> respondent Kirinyaga South District Land Dispute Tribunal acted ultra vires, it's jurisdiction and its award is a nullity and so too is the decree of the 2<sup>nd</sup> respondent the Senior Resident Magistrate's Court that followed the said award. I accordingly call into this court the said award and decree and quash them forthwith together with any consequential orders flowing therefrom.

Each party to bear their own costs of this application.

**B.N. OLAO**

**JUDGE**

**29/4/2013**

29/4/2013

Before B.N. OLAO – JUDGE

CC – Muriithi

Applicant

Respondent

Mr. Kahiga for interested party present

Ms Kiragu for 3<sup>rd</sup> respondent present

Attorney General for 1<sup>st</sup> and 2<sup>nd</sup> respondent absent

COURT: Judgment delivered this 29<sup>th</sup> day of April 2013 in open Court.

**B.N. OLAO**

**JUDGE**

**29/4/2013**