



Warui (Suing as the Personal Representative of Warui Muriu) v Chief Magistrate's Court at Murang'a & 2 others (Environment and Land Miscellaneous Application 1 of 2022) [2023] KEELC 315 (KLR) (26 January 2023) (Ruling)

Neutral citation: [2023] KEELC 315 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION 1 OF 2022
LN GACHERU, J
JANUARY 26, 2023**

BETWEEN

MONICAH WANJIRU WARUI (SUING AS THE PERSONAL REPRESENTATIVE OF WARUI MURIU) APPLICANT

AND

THE CHIEF MAGISTRATE'S COURT AT MURANG'A 1ST RESPONDENT

THE LAND REGISTRAR AT MURANG'A 2ND RESPONDENT

MARY NJOKI SIMON (SUING AS THE PERSONAL REPRESENTATIVE OF MUCHOGO MURIU) 3RD RESPONDENT

RULING

1. The Applicant moved this Court vide a Notice of Motion Application dated August 11, 2021, and filed on the even date for orders that; -
 - a. Spent
 - b. Spent
 - c. That the Court does issue a further order inhibiting the 2nd Respondent from registering any changes on the register of land parcel Loc17/Iganjo/3440, which resulted to the sub-division of Loc17/Iganjo/3721, pending hearing of this motion.
 - d. Pending the hearing and determination of the Motion herein, this Honourable Court be pleased to issue an order of injunction and/ or inhibition against the Respondents herein, prohibiting the execution and/ or implementation of the orders herein issued on July 29, 2021, in CMCC No 66/05- Murang'a



- e. This Honorable Court be pleased to recall the records and/ or Orders in CMCC LDT Case No 66/05- Murang'a and determine the same for reason that
 - i. The Tribunal lacked jurisdiction
 - ii. The Provincial Land Disputes Tribunal declared the orders void hence there was nothing for the Chief Magistrate Court to enforce
 - f. This Honourable Court be pleased to issue and/ or grant any other and/ or further orders, relief as it may deem just and expedient in the circumstances
 - g. The 3rd Respondent be condemned to pay the costs hereof
2. The Application is premised on the Supporting Affidavit of the Applicant – Monica Wanjiru Warui sworn on August 11, 2021. It is her disposition that vide Succession Cause No Murang'a SPM Succ No 187 of 1991, her deceased husband was a beneficiary of 16 acres in land parcel No Loc17/ Iganjo/1. That, the 3rd Respondent's father Muchogo Muriu, had prior to the death of their father, her father-in-law, had been allocated land parcel No Loc17/Iganjo/2, measuring 14 acres. She contends that after sub-division, her husband was issued with title to his 16 acres being Loc17/Iganjo/3440.
 3. She further contended that the 3rd Respondent's moved the Land Disputes Tribunal in LDT No 41/04- Maragua, claiming 3 acres, out of her deceased husband's share and the Tribunal found in his favor. She further deponed that her husband appealed against the decision of the Tribunal in Provincial LDT No 01/2006, and which Appeals committee found that the LDT Tribunal lacked the jurisdiction to determine the matter. She also deponed that during the pendency of the Appeal, the 3rd Respondent moved the Court in SPMCC LDT No 66/05, to adopt the Tribunal's award, but which Court later stayed the proceedings after receiving the Appeal's decision. That despite the foregoing, the Court vide its Ruling of July 29, 2021, adopted the Tribunal's award, giving effect to the proceedings of the Tribunal, jurisdiction notwithstanding.
 4. The 3rd Respondent in opposing the Notice of Motion Application, filed a Replying Affidavit sworn on July 5, 2022. It is her case that the Tribunal's award was adopted as an order of Court on January 12, 2006, way before the determination of the Appeal. Additionally, that she moved the Court seeking to have the Executive Officer, sign transfer documents on behalf of the Applicant herein and which application was allowed. That the Applicant has never appealed or set aside the said orders, and some of the prayers have since been overtaken by events.
 5. The matter was dispensed with by way of written submissions. The Applicant filed her submissions on August 25, 2022, wherein she raised four main issues for determination by this Court.
 6. On the issue of whether the Tribunal had jurisdiction, the Applicant submitted that the Appeals Committee determined that the LDT tribunal lacked jurisdiction. Reliance was placed on the case *Peter Atambo Magoya vs Stella Osebe*{2019}eKLR, where the Court in determining whether a Land Disputes Tribunal had jurisdiction considered the provisions of Section 3(1) of the Land Disputes Tribunals Act, and opined that the Tribunal did not have jurisdiction to determine issues relating to titles on registered land.
 7. On whether the orders issued by the Tribunal were illegal, null and void, she submitted that as at the time the 3rd Respondent moved the Tribunal, her husband already had title and as such, the Tribunal, acted beyond their jurisdiction. To buttress this assertion, she relied on a litany of cases where the Courts appreciated that the Orders of a Tribunal without jurisdiction cannot be sustained. It was her submissions that the award of the Tribunal had no legal effect and even though the Court adopted the



- same, it lacked the legal effect. She relied on the case of *Michael Thiongo Gatete vs Attorney General & Others*{2017}, where the Court held that the Tribunal's jurisdiction having been declared null and void, the Magistrate's Court had nothing to adopt as a judgment. In the end she urged this Court to allow the application.
8. The 3rd Respondent filed her submissions on September 22, 2022. It was her submissions that the Appeals Tribunal did not hear the suit on merit, but the Applicant was advised to seek audience at the High Court, which she has never pursued. Thus, that the Orders of the Court of December 22, 2005, are valid having not been varied, set aside and/ or cancelled. Further, she submitted that the prayers b, c and d of the application cannot issues for the reasons that the said orders have been effected and a title deed issued. She further contended that the Applicant is guilty of laches, having delayed in prosecuting the matter. She relied on the case of *Benjob Amalgamated Limited & Another Vs Kenya Commercial Bank Limited*{2014}eKLR. She prays that the Court be inclined to dismiss the application.
 9. Before delving into the merits of this case, it is relevant for this Court to first understand the genesis of the instant application. From the scanty and otherwise sketchy evidence, this Court notes that the suit land was first registered as Loc 17/ Iganjo/1, in the name of Muriu Gathege Gathege.
 10. That the suit land was subject to a Succession Cause being Murang'a SPM No. 187 of 1991, where it appears the land was 51 acres and shared as per the copy of the rectified Certificate of Confirmation of Grant, attached to the application as "MWW1".The Applicant's husband, Warui Muriu was issued with 16 acres of the Loc 17/ Iganjo/1.
 11. The Applicant's husband is the registered owner of Loc 17/Iganjo/3440, and which parcel was subject to proceedings in Makuyu LDT No 41 of 2004, between Muchogo Muriu vs Warui Muriu, which this Court notes from the pleadings that they were siblings. Muchogo Muriu claim was that his brother Warui Muchogo had disinherited him. The Tribunal in their award resolved that Muchogo Muriu, was entitled to 3 acres to be excised from Warui's 16 acres.
 12. Warui Muriu being dissatisfied with the Tribunal's award, moved the Appeals Committee vide LDT Claim No 01 of 2006. It was the findings of the Appeals' Committee that The Land Disputes Tribunal has no jurisdiction over the matter, since the land had been registered and title deed procured. He advised the parties to move to Court for determination. The pronouncement was made on September 23, 2010.
 13. On December 22, 2005, the Court in Murang'a SPM No 66 of 2005, by dint of an application dated July 27, 2005, adopted the Makuyu LDT award as a Judgment of the Court. As per the Order, the application for adoption was heard in the presence of both parties. From the ruling of the Court of December 22, 2005, it is evident that as at the time of the application, no appeal had been preferred by the Applicant herein.
 14. This Court has perused a copy of an order issued by the Murang'a SPM No 66 of 2005 on October 30, 2008, which shows that the Applicant herein moved the said Court seeking to review its judgment. The Court allowed the application for review and issued an order staying proceedings until an appeal is heard and determined. It is not clear which appeal the Court was making reference to. Interestingly, the Applicant herein moved the said Court vide an application dated June 22, 2020, seeking Orders for review of the orders of the Court adopting the award among others prayers.
 15. The 3rd Respondent contends that the application was dismissed for non-attendance on April 1, 2021. The Court has further perused a copy of a ruling and an order thereof issued on August 24, 2021, which the Court in Murang'a PM No 66 of 2005, authorized the Court's Executive Officer to sign and execute the necessary transfer letters among others Orders, the effect of which meant enforcement of



- the Judgment of the said Court. It is not clear to this Court whether the said Orders have been acted on or not since the 3rd Respondent apart from deponing to the positive has not produced any title deed.
16. The Applicant has now moved this Court under a miscellaneous Application suit seeking the orders enumerated hereinabove. It is not clear to this Court whether the Court in Murang'a SPM No 66 of 2005, was notified of the pronouncement of the Appeals Tribunal. There is an Order of the Court in Murang'a PM No 66 of 2005, issued on July 29, 2021, which has not been appealed, set aside and/ or varied to the knowledge of this Court. It is also clear from the pleadings attached that the 1st and 2nd Respondents were never part of the proceedings in the aforementioned case.
 17. With this in mind and taking into consideration the rules of procedure and the intent of Article 159(2) (d) of the Constitution, it is relevant for this Court at this point to determine whether the application can be entertained.
 18. The Application is anchored on the provisions of Section 10 of the High Court (Organization and Administration) Act, Rules 15, 16 and 17 of the High Court (Practice and Procedure Rules) under the Judicial Act. Section 10 of the High Court Act makes provisions for the sittings and recess of the Court. The High Court (Practice and Procedure Rules) is a subsidiary legislation under the Judicature Act.
 19. Section 19 of the Civil Procedure Act makes provisions on how parties can file suits in Court. It provides that every suit shall be instituted in such a manner that may be prescribed by the rules. Thus, Order 3 Rule 1 of the Civil Procedure Rules provides:

“(1) Every suit shall be instituted by presenting a plaint to the Court, or in such other manner as may be prescribed.”
 20. However, when approaching the superior Court on pleadings emanating from the lower Court, the same can be through an appeal. The facts founding the instant application commenced in the Makuyu Land Disputes Tribunal, and found itself as a judgment of the Court in Murang'a PM No 66 of 2005, by dint of procedure. The same can thus get to this Court by means of an appeal.
 21. The Applicant seeks to challenge the decision of the trial Court. As alluded to earlier, the suit emanated from the Tribunal and a reading of Section 7 of the Land Disputes Tribunals Act, (repealed) the Trial Court did not have any other role other than to adopt the orders. The Section provides:

7(1) The Chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the Magistrate's Court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.
 22. It is evident from the documents attached that the order was adopted in 2005, and the appeal determined five years later. The trial Court therefore had no other business but to adopt the order of the Tribunal as required by the procedure as there was no order barring it from adopting such an order. The trial Court cannot be faulted in any way for adopting the order, the Tribunal's jurisdiction notwithstanding.
 23. The 3rd Respondent submitted that she has already procured title which was issued on July 29, 2021, and even though this Court has not perused a copy of the said title deed, it has no reason to doubt the information. The essence of the foregoing is that vide the Ruling of July 29, 2021, the proceedings thereon despite being a void, have already been acted on. The Applicant must as a matter of law and



procedure move this Court for orders of cancellation of the title if any and this Court will then have the opportunity to adequately interrogate the facts and evidence and issue appropriate orders.

24. It is only prudent that the Applicant be duly guided by her counsel on the proper way through which she can approach this Court. It has been held by several Courts that a Notice of Motion can only be filed in a properly and procedurally instituted suit, unless in occasions allowed by rules of procedure and which the instant one is not one of them. Unless properly moved, this Court cannot issue the orders sought herein.
25. To this end, the Applicant's Notice of Motion Application dated August 11, 2021, is found not merited and the same is dismissed entirely with costs to the 3rd Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 26TH DAY OF JANUARY, 2023.

L GACHERU

JUDGE

Delivered virtually in the presence of;

Court Assistant – Joel Njonjo

M/s Waithera Mwangi for the Applicant

1st Respondent - Absent

2nd Respondent – Absent

3rd Respondent – Absent

L. GACHERU

JUDGE

26/1/2023

