



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Judicial Review 27 of 2008

IN THE MATTER OF LAND DISPUTES TRIBUNALS ACT

AND

IN THE MATTER OF PROVINCIAL LAND DISPUTES APPEAL

COMMITTEE APPEAL NO. KIRINYAGA 6/2005

AND

IN THE MATTER OF MWEA LAND DISPUTES TRIBUNAL

NO. D26D/VOL.IV/145

AND

IN THE MATTER OF WANG'URU SRM ARB CASE NO.13 OF 2004

AND

IN THE MATTER OF LAND PARCEL NO. MWERUA/KITHUMBU/1049

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN, NYERI PROVINCIAL

LAND DISPUTES APPEALS COMMITTEE.....1ST INTERESTED PARTY

THE CHAIRMAN, MWEA DIVISIONAL

LAND DISPUTES TRIBUNAL.....2ND INTERESTED PARTY

THE SENIOR RESIDENT MAGISTRATE WANG'URU.....3RD INTERESTED PARTY

BERNARD WANJOHI KANG'ARA.....4TH INTERESTED PARTY

JUDGMENT

The ex-parte applicant herein one Eliud Warui was granted leave by this court on 4/6/08 to apply for orders of Certiorari, Mandamus and Prohibition. He subsequently filed the notice of motion dated 25/6/2008 seeking the following orders:-

1. That an order of certiorari do issue quashing the undated award of the Mwea Divisional Land Disputes Tribunal Case No. D26D/Vol.IV/145 and the resultant decree of the Senior Resident magistrate at Wang'uru entering Judgment as per the undated award in Tribunal case, No. 13 of 2004 in respect of land parcel No. MWERUA/KITHUMBU/1049.

2. That an order of prohibition do issue against the Central Provincial Land Disputes Appeals Committee prohibiting it from proceeding with Appeal No. KIRINYAGA 6 of 2005 in respect of land parcel No. MWERUA KITHUMBU/1049.

He also asks for costs. He relies on the 6 grounds on the face of the application. I would nonetheless wish to point out that the supporting affidavit dated 25/6/2009 contravenes Order LIII Rule 4 as the same was filed without the leave of the court. The same is therefore expunged from the record. The ex-parte applicant should have relied on the affidavits and grounds filed with the application for leave. Be that as it may however, I have considered the statement of facts and the verifying affidavit and the annexures thereto. I have also considered the content of the 4th interested party's replying affidavit.

This is a very straight forward case indeed. It is trite law now that Land Disputes Tribunals do not have jurisdiction to arbitrate over matters of ownership of registered land. The mandate of the Tribunal is restricted and strictly confined to Section 3 (1) of the Land Disputes Tribunals Act which provides as hereunder.

1. Subject to this Act, all cases of Civil Nature involving a dispute 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.

It is clear that the above provision does not confer jurisdiction to cancel or rectify Title Deeds on the Tribunal. Such jurisdiction is vested on the High court pursuant to section 143 of the Registered Land Act Cap. 300 of the Laws of Kenya.

Indeed, I note that all the 6 grounds raised by the ex-parte applicant in his notice of motion revolve on this one ground. The averment by the 4th interested party that his claim was one to occupy land is not correct because he was claiming ownership of the plot in question which ownership he was actually given by the Tribunal. In its award, the Tribunal directed;

“We therefore inform the Land Registrar to revoke the Title Deed issued to Eliud Warui.”

As stated earlier, the Tribunal has no jurisdiction to revoke or interfere with a Title Deed in any manner. For this reason, the Notice of Motion must carry the day. The same is hereby allowed. The award in question and the decree of the **Senior Resident Magistrate Wang'uru Arbitration Case No. 13 of 2004** in respect of Land Parcel **No.MWERUA/KITHUMBU/1049** is called into this court and the same is hereby quashed.

The costs of the motion are awarded to the ex-parte applicant.

W. KARANJA

JUDGE

Delivered, dated and signed at Embu this 4th day of Nov 2009.

In presence of:-Mr. Mwai & Mr. Kinyua for the parties.

W. KARANJA

JUDGE



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