



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ELC MISC APPL. NO.172 OF 2005

MWILU NDWIKI APPLICANT

VERSUS

THE CHAIRMAN, DISTRICT

DISPUTES TRIBUNAL, MWALA RESPONDENT

CHIEF MAGISTRATE'S COURT MACHAKOS.....RESPONDENT

AND

GEOFFREY MUKUNDI KARIUKI INTERESTED PARTY

R U L I N G

1. By a motion dated 26.7.2005 the Applicant Mwilu Ndwiki seeks orders that the first respondent award be quashed and also an order of prohibition be issued to stop its implementation plus costs. The Application is supported by the verifying affidavit of Mwilu Ndwiki sworn on 26.7.05 statement of facts dated 28.6.05 and supporting affidavit sworn by the Applicant on 28.6.05 and a bundle of annexures.
2. None of the Respondent including interested party have filed Reply to the motion to oppose it. Instead only the Interested Party who has filed written submissions raising a legal issue thereof. The Applicant has also filed written submissions. The Applicant contention is that the tribunal did not have jurisdiction in enforcing the sale agreement as it is outside the mandate donated to the tribunal under Section 3 of the LDT Act 1990 (repealed). In the tribunal decision the award states that the sold portion be sub-divided and transferred through the Land Control Board and a title be issued.
3. The parties to the dispute were Geoffrey Mukundi Kariuki, Claimant and Mwilu Ndwiki. However, the owner of the land was Nini Ndwiki who had died on 6.1.1998 three years to 24.7.01 when the dispute was heard and there was no legal representative to represent her estate. The Applicant submits that the tribunal had no jurisdiction to adjudicate on matter. He relies on **LILIA S. VS. CALTEX OIL (1990) KLR 1** where court held that:

“Jurisdiction is everything. Without it, a court had no power to make any more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending evidence”.

4. This authority applies in all forms in our instant case. The tribunal could not entertain the matter

- without jurisdiction. The interested party admits and concedes in its submission as much that the tribunal has no jurisdiction to entertain the dispute as it was on sale agreement enforcement.
5. However, the interested party issue is that the applicant should have obtained grant in form of Ad litem to be able to stand up in court and defend the interest of NINI Ndwiki the registered owner of the suit land and thus he lacks *locus standi* in the matter to purport to represent the estate even in the instant proceedings. The court observes that the applicant was taken to the tribunal by the Interested Party and after the award he instituted the instant proceedings to challenge the verdict of the 1st Respondent. He is perfectly entitled as a party to question the validity and legitimacy of the proceedings herein as a party. He does not necessarily have to defend the estate of NINI Ndwiki deceased, but having been sued before the tribunal he has all the right to indicate that the owner of land is deceased and that the tribunal had no jurisdiction.
 6. In the instant proceedings he is pointing that what happened before tribunal is a nullity. In **KNEC AND R. CIVIL APPEAL NO.266/96** the court held:

“Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with or for such like reasons”.

7. The court thus makes the following orders:

1. The notice of motion dated 26.7.2005 is granted in terms of prayers 1, 2 and 3.

Signed and delivered at Machakos, this 23rd day of **January, 2015.**

CHARLES KARIUKI

JUDGE