



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

ELC CASE NO.203 OF 2009

IN THE MATTER OF AN APPLICATION BY MUTINDA MUANGE & KATUKU MWANGANGI
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL

MUTINDA MUANGE

KATUKU MWANGANGI EX-PARTE APPLICANTS

VERSUS

YATHUI LAND DISPUTES TRIBUNAL – MACHAKOS 1ST DEFENDANT

CHIEF MAGISTRATE’S COURT MACHAKOS 2ND DEFENDANT

DISTRICT LAND REGISTRAR 3RD DEFENDANT

HONOURABLE ATTORNEY GENERAL 4TH DEFENDANT

AND

KILUNGU MUATHE *alias* KILUNGU MUANGE

NDUULU MUNGUTI *alias* NDUULU MUSULI INTERESTED PARTY

RULING

1. The Applicant filed Motion dated 2.7.09 and filed on 18.7.09 seeking the following orders:-
 1. That the award given on the 20.9.2008 by the Yathui Land Disputes Tribunal Machakos, and the entire proceedings thereof respecting Tribunal Case No.77 of 2008 (Ndulu Makau Munguti – Deceased) and Kilungu Muathe Vs. Mutinda Muange & Katuku Mwangangi) be brought before this court for the purposes of being quashed).
 2. That prohibition orders do issue prohibiting the chief magistrate Court Machakos from issuing a

- decree and or any execution orders respecting the said Yathui Land Disputes Tribunal Award given on 20.9.2008 in case No.77 of 2008 (Ndulu Makau Munguti (Deceased) and Kilungu Muathe Vs. Mutinda Muange & Katuku Mwangangi) and adopted by the Chief Magistrate Court on 22.12.2009 in Miscellaneous No.160 of 2008.
3. That prohibition orders do issue prohibiting the District Land Registrar from executing and or in any way implementing the said Yathui Land Disputes Tribunal Award given on 20.9.2008, in case No.77 of 2008 and adopted by the Chief Magistrate's Court Machakos on 22.12.2009, in the Misc.No.160 of 2008.
 4. That costs be in the cause.
2. The same was based on order LIII Rules 3 Civil Procedure Rules and Section 3 and 3A Cap 21. The application is based on the grounds on the face of the motion and supported by an affidavit sworn by Katuku Mwangangi on 2.7.09. The Applicant had also filed Statement of facts dated 19.6.09 and verifying affidavit though couched as supporting affidavit sworn on 19.6.09.
 3. The Applicant summary case is that the suit land **Muthetheni/Kalamba/1 and 3** is registered in the name of Ndulu Makau Munguti deceased. While he was so deceased the LDT Tribunal entertained a dispute over above suit land without any administrator of the said deceased estate being party.
 4. One of the claimant in the matter LDT case No.77/08 had died in 2004 before the dispute was lodged. In the foregoing circumstances the Applicant avers that the tribunal did not have jurisdiction to entertain the dispute. The succeeding party in the case o.77/08 Ndulu Munguti was not a claimant and/or a witness thereof and did not participate in the proceedings.
 5. The Applicant avers that he is a beneficiary of the estate comprising suit land and stand to suffer irreparably if award issued by LDT Tribunal is executed. The 2nd Respondent has filed grounds of opposition dated 11.10.09 in which he avers that the application is incompetent, it lacks merit and offends order 53 Cap 21 as it is supported by affidavit rather than a verifying affidavit. The interested parties submit that Motion dated 2.7.09 is incompetent and incontestably bad in law and above all fatally defective. This is because the award was read to parties on 20.9.08 and the application for leave to apply for judicial review was filed on 19.6.09 outside the 6 months period prescribed by the law. The decree had already been issued and thus prohibitory relief was overtaken by the event.
 6. The court has perused the pleadings, affidavit and gone through the materials before the court. The court notes that the application for leave was lodged on 19.6.2009 while the award was read to parties on 20.9.08. The same was filed outside the 6 months period prescribed by the provisions of order 53 of Civil Procedure Rules and provisions of Section 8 of Law Reforms Act Cap 21 on the application for orders of certiorari.
 7. The prohibitory order comes in handy to prohibit a statutory body from acting outside jurisdiction not to undo what has happened. It could have been appropriate if it was sought to stop the Tribunal on its track from hearing the dispute. Refer to **SAMSON KIRERA M'ARUCHIU – VS- MINISTER FOR LANDS & OTHERS Meru HC MISC 111/97.**
 8. In the circumstances the Motion dated 2.7.09 and filed on 10.7.09 is incompetent. The court thus makes the following orders:
 1. The Notice of Motion dated 2.7.09 and filed on 10.7.09 is struck out.
 2. Parties to bear their own costs.

Dated and Delivered at Machakos this 27th day of February, 2015.

CHARLES KARIUKI

JUDGE