



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
ELC MISC.AP.NO.24 OF 2008

REPUBLIC..... APPLICANT

AGAINST

**THE DISTRICT LAND DISPUTES TRIBUNAL TULIMANI DIVISION 1ST
RESPONDENT**

ALPHONSE K. NDOLO)

ALICE M.

NDOLO)

**DORCAS M. NDOLO).....INTERESTED
PARTY**

LOIS K. WAMBUA)

SAMUEL W. KATUKU)

MUSEMBI NDOLO).....EXPARTE

RULING

1. The suit land Mbooni/Ilelani/445 was via Machakos HC. Succession No.113/98 shared to Philip Musembi Wambua, Samuel Wambua Kituku, Loise Kivaa Wambua, Kyamithenga SDA church vide certificate of confirmation of grant dated 16.5.2001. This prompted Alphonse K. Ndolo, Alice M. Ndolo and Dorcas M. Ndolo to file LDT case No.37/06 of 25.5.06 against Loise K. Wambua, Samuel K. Kituku and Musembi M. Ndolo.

2. After hearing the parties the Tribunal made the following orders parcels No.Mbooni/Itetani/1365, 1366, 1367 and 1368 which were subdivisions of 445 be cancelled and sub divided between the 3 sons of Ndolo namely: Alphonse Ndolo, Nathan Muema Ndolo and Zakayo Wambua Ndolo. This prompted

Loise Wambua, Samuel W. Katuku and Musembi Ndolo to Institute instant matter challenging the LDT award; via a motion dated 27.4.07 the Applicants seek to quash the aforesaid award and to prohibit interference with applicant's right in the suit properties.

3. The Applicant's case is that the tribunal did not have jurisdiction to handle the dispute as it was purely an ownership and trust dispute section 3 of the LDT Act which set out LDT Tribunal jurisdiction does not include ownership and trust issues. The Applicant argue that the Tribunal did not have powers to order cancellation of titles as that is a preserve of the High Court only. The Applicant submits that the decision by the tribunal overruled the High Court decision in Succ. No.113/1998 which did distribute the shares held by the Applicants. In reply to the Applicant's case, the interested parties argue that what Tribunal did is subdivision of the subject matters which is within its mandate under Section 3 of LDT Act.

4. The interested party argued that the dispute was over the cited parcels of land already in the Applicant's names not against estate of Zakayo Wambua deceased. The Interested parties claimed their shares from the lands in Applicant's names and the objectors, thus within the realm of the provisions of Section 3 of LDT Act. The parties were given opportunity to be heard and were heard and if they were dissatisfied they ought to have filed an appeal. The Award was read in presence of the parties and later adopted as a court judgment as required by Section 7(1) and (2) of the LDT Act. This is in line with **NDUNDA MIOWO –VS- MUGO RIAKATINE (2003) eKLR** authority.

5. On the issue of time bar on the claim, the interested parties submit that the time started to run in 2001 when the Applicants were registered as the proprietors, thus the claim was not time barred. The interested parties argue further that the prohibition orders sought cannot issue as they are directed against private persons instead of public officials. This is against the law as held in **REPUBLIC –VS- REGISTRAR GENERAL & ANOTHER EXPARTE JAMES PAPA (2004) eKLR** where the court held that:

“Prohibition only prohibits an inferior tribunal or body from continuing with proceedings in excess of the jurisdiction or in contravention of the law”.

The interested parties thus seek the application to be dismissed with costs. The Respondents were served but they never filed replying affidavits, written submissions nor attend court for hearing.

6. After perusing materials before the court, the court makes the following findings:

- The shares of the suit lands were awarded by the High Court in HC. Succ. No.113/1998.
- The shares went to 4 named persons including a church.
- The tribunal entertained interested persons claims which were the distribution of the estate of the Zakayo Ndolo their deceased father.

Any person dissatisfied in distribution of the estate or omitted in the share distribution could either seek revocation of grant or seek redistribution of the estate. The other option is to lodge an originating summons as beneficiary to seek the court intervention in allocating shares from the properties shared from the deceased estate. That is by invoking the provisions of order 37 of the Civil Procedure Rules Cap 21.

7. The tribunal mandate under Section 3 of LDT act is confined to division of or determination of the boundaries, claim to occupy or work land or trespass to land. The issue of sharing of deceased estate or trust property is not within the mandate of the tribunal. Without going to other grounds, the court finds that the tribunal lacked jurisdiction to make the award impugned herein and same cannot stand as it is null and void.

8. The court thus makes the following orders:

1. Prayer No.1 of the motion dated 27.4.07 is granted.
2. The order of prohibition is granted to the extent that the Respondents are prohibited from implementing the award impugned herein.
3. Parties to bear their own costs.

Dated and Delivered at Machakos, this 20th day of February, 2015.

CHARLES KARIUKI

JUDGE