



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MACHAKOS  
CIVIL MISC. APPLICATION NO. 207 OF 2008

REPUBLIC.....APPLICANT

AND

1. KAJIADO SENIOR RESIDENT
2. MAGISTRATE'S COURT
3. KAJIADO LAND DISPUTES TRIBUNAL
4. RIFT VALLEY PROVINCIAL LANDS APPEAL COMMITTEE
5. MANESSEH LEMAIYAN TANDE.....RESPONDENTS

1. FAITH WANJUHI KAMAU
2. JOHN NJOROGE NGUGI.....EX PARTE

**RULING**

1. The **Notice of Motion** dated 24/10/2008 seeks orders that:-

1. **“An order of PROHIBITION to bar the Kajiado Senior Resident Magistrate’s Court from entertaining, reading, adopting, or in any way giving Judicial endorsement to the purported Elders’ award.**
2. **An order of MANDAMUS to compel the Kajiado Senior Resident Magistrate’s Court to divest its jurisdiction to read and adopt the purported award of the Kajiado Land Disputes Tribunal as a decree of its own and or vacate or set aside the said award for want of *ab initio* jurisdiction.**
3. **Costs of and incidental to the application be provided.**
4. **Such further and other relief that the Honourable Court may deem just and expedient to grant”.**

2. According to the statutory statement and the verifying affidavit, the *ex parte* Applicants, **Faith Wanjiri Kamau** and **John Njoroje Ngugi** (hereinafter Applicants), are the registered owners of land parcel No.

**Ngong/Ngong/28722** which was purchased from **Geoffrey Kanyakwa Ole Tande** the father of the 4<sup>th</sup> Respondent. The Applicants' complaint is that the 4<sup>th</sup> Respondent without any lawful grounds purported to lay claims on a portion of the Applicants' land.

3. The Applicants have further stated that the 4<sup>th</sup> Respondent filed **Kajiado Land Disputes Case No. 328 of 2006**. That the Tribunal which had no jurisdiction over the dispute purported to excise 0.082 Hectares from the Applicants' said parcel of land. The Applicants appealed to the **Land Disputes Appeals Committee** but his appeal was dismissed. The decision is pending adoption by the **Magistrate's Court**.

4. There was no reply by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents.

5. The 4<sup>th</sup> Respondent, **Manesseh Lemaiyan Tande** opposed the application. It is stated in the replying affidavit that he is a co-administrator in the estate of his father, the late **Geoffrey Kanyakwa Tande**. It is the 4<sup>th</sup> Respondent's contention that the dispute was in respect of a boundary and therefore the Tribunal had jurisdiction. That the Applicant purchased ½ acre of land and not the larger portion that they have fenced.

6. Directions were given that the matter be canvassed by way of written submissions. The Applicant's and the 4<sup>th</sup> Respondent's submissions were filed. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not file any. I have considered the submissions filed.

7. The Applicants have sought orders of prohibition and *mandamus* against the **Senior Resident Magistrate's Court, Kajiado**, and to have the said award vacated for want of jurisdiction.

8. **Section 7 (2) of the Land Disputes Tribunal Act No. 18 of 1990** provides as follows:-

**"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."**

9. The Magistrate's Court therefore has the requisite jurisdiction to adopt the decision of the Tribunal. It is not the role of the Magistrate to question the contents of the Tribunal's award.

10. The Kajiado Land Disputes Tribunal in its award made orders that 0.082 Hectares be excised from land parcel No. **Ngong/Ngong/28722**. The said decision of the **Kajiado Land Disputes Tribunal** was upheld by the **Land Disputes Appeal Committee Case No. 9 of 2007** on 9/10/2007. This was a determination on ownership of land contrary to the provisions of **section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990** which provides as follows:-

**"Subject to this Act, all cases of a civil nature involving a dispute as 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."**

11. With the foregoing, I find the application has merits on the question of jurisdiction. Consequently, I set aside the award as prayed. Each party to meet own costs.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Machakos this **18<sup>th</sup>** day of **February** 2015.

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**B. THURANIRA JADEN**

**JUDGE**