



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

MISC.C.APP.NO.224 OF 2011

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW BY GEORGE
TORONKE FOR ORDER OF CERTIORARI AND PROHIBITION**

IN THE MATTER OF: THE LAND DISPUTES TRIBUNAL ACT 1990 (ACT NO.10)

BETWEEN

REPUBLIC APPLICANT

VERSUS

SANCHAKA OLOLODI 1ST RESPONDENT

SENIOR RESIDENT MAGISTRATE KAJIADO 2ND RESPONDENT

LAND DISPUTE APPEAL COMMITTEE RIFT VALLEY ... 3RD RESPONDENT

AND

PATRICK LEMPERRE MBOGO 1ST INTERESTED PARTY

JAMES PARSANKA OLE MBOGO (AS ADMINISTRATORS OF

ESTATE OF ALFRED KIMANI TORONKE)..... 2ND INTERESTED PARTY

RULING

1. By an **Award** dated **17.7.2009** the Kajiado Land Disputes Tribunal in case **No.TC/459/6/08**, the Tribunal ordered the objector and his family evicted from claimant/Applicant's land. An appeal was lodged to the Land Appeal Committee Rift Valley Province in case No.LDA No.4/2011. By an award dated 22.6.2011 the Appeal Committee decided to allocate 200 acres to the 1st Respondent and directed a title be issued to his name.
2. The aforesaid decision precipitated the filing of the instant **Motion** dated **19.10.2011** seeking orders of certiorari to quash said Appeals Committee award and prohibition to stop Respondent's from transferring the suit land to the 1st Respondent. The motion is supported by the grounds on the face of the motion and is supported by the Affidavit of George S. Toronke sworn on 19.10.2011. The Applicant had also put a verifying affidavit sworn on 3.10.2011 and a statement

- of facts dated 3.10.2011 at the application of leave stage.
3. The Interested Parties have put affidavit and further affidavit sworn by Patrick Lemperra Mbogo 1st Interested Party and supports the application to be allowed as prayed. The 1st Respondent has opposed the application via his affidavit sworn on the 7.11.2014. The Applicant also filed a further affidavit sworn on 24.11.2014. The parties save for 2nd and 3rd Respondent agreed and did put written submissions to canvass the motion. The 2nd and 3rd Respondents did not file replying affidavit despite service of instant motion being effected upon themselves. The Interested parties adopted the applicant's submissions.
 4. The Applicant summary case is that the suit land belonged to Alfred Kimani Toronke's father of the Applicant and Interested Parties. Upon his demise the Interested Parties No.1 and 2 were mandated by the deceased family to file Succession Cause Nairobi HC. Succession No.1140/1992 in which they were appointed the Administrators of their father's estate. The grant was subsequently confirmed. The Applicant is a beneficiary of his father's estate and was listed in the succession case as Musemba Toronke as such as he was aged 8 years.
 5. The Applicant though not an administrator of his father's estate, lodged LDT case No.TC/459/6/08 against the 1st Respondent which ordered the 1st Respondent to vacate suit land. The 1st Respondent appealed against the verdict and the Appeals Committee awarded him 200 acres of the deceased estate. The decision is the one impugned by the motion before the court. The Appeals Committee decision is attacked on principally 2 grounds that the tribunal had no jurisdiction to deal with title to land or order revocation of title or direct Land Registrar to issue title deed to the 1st Respondent or any other person or at all. The other ground is that the 1st Respondent claim to land should have been made in the Succession Case or against administrators after confirmation of grant.
 6. The Respondent No.1 case is that the suit land was registered in Alfred Kimani Toronke (deceased) names. Upon his demise the 1st and the 2nd Respondents were appointed the administrators of his estates. There is no disputes that the Applicant is a beneficiary and that it is him who was listed as a beneficiary in Succession case as Musemba Toronke. The 1st Respondent disputes the Applicant's capacity to institute the instant matter as he is not the administrator of the deceased estate. The 1st Respondent further states that he has been in suit land for over 30 years in a continuous, exclusive and uninterrupted possession and occupation without the deceased permission nor agreement with the owner. He avers that he has a pending case, Machakos HCC No.62/2010 (OS) against the 1st and 2nd Interested Parties.
 7. The Interested Parties associate and support the Applicant's case in their 2nd affidavits sworn on 7.12.2011 and a further affidavit sworn on 29.11.2014 both by Patrick Lemperra Mbogo. After going through the materials before the court, I find the following issues emerging:

1. Whether the Tribunal had jurisdiction to entertain the matter?
2. Whether the Appeals Committee had jurisdiction to make the decision they made?
3. Whether the Applicant had capacity to lodge matter in Tribunal and in court?
4. What is the order as to costs?

8. The registered owner of the suit land Alfred Kimani Toronke deceased died on 20.10.1990 and the Administrators of his estate the 1st and 2nd interested parties were appointed on 17.8.1994. By the time the Applicant lodged LDT case No. TC 459/6/08 he was not the legal representative of his father's estate in terms of Section 82 of Cap 160 to be able to enforce by suit or action by virtue of any law arising out of deceased's estate. Section 79 of same Cap.160 stipulates that:

“Administrator is personal representative of deceased... and all properties of deceased vest in him.”

9. The LDT case above was lodged and tried without involving the administrators. The Applicant thus lacked capacity to lodge the same dispute and the tribunal also lacked jurisdiction to entertain the claim while the administrators were not parties. In any event the claim seems to have revolved around the 1st Respondent's claim under adverse possession doctrine. By dint of Section 3 of the

LDT Act 1990 (repealed) and Section 37 and 38 of Cap 22 the ownership termination and vesting of the title to the 1st Respondent could only be handled by the High Court as it is not within the realm of the tribunal jurisdiction. The proceedings were thus a nullity at the District Land Tribunal level on the aforesaid grounds.

10. The lodging of the appeal to the Appeals Committee was not a cure to the nullity. The Appeal Committee to allocate 200 acres to the 1st Respondent and direct issuance of title deed was just compounding the nullity. The Appeal Committee did not have jurisdiction to make the decision it made and it could not make such a decision under the provisions of LDT Act 1990. On the challenge of the Appeals Committee decision in the instant Motion, it has been argued that the Applicant has no locus or rather capacity to do so and thus the Motion is said to be incompetent.
11. The Applicant has been in the dispute from District level to Provincial Appeals and there is no more proper person to challenge the verdict of Appeals Committee than a party to it. The Applicant had capacity to file the motion and point out all the anomalies which arose along the way from LDT tribunal to Land Appeal case. The 1st Respondent has filed Machakos HCCC No.62/2010 (OS) claim under adverse possession and rightly so after realising that the instant matter could not be handled by the tribunal.

In the **LAW HAND BOOK TREATISE**, the author states that;

“Certiorari is an order setting aside decision.... it would be sought where a decision has been made unlawfully and the decision should be set aside.”

12. In our instant case the court agrees with the above authors words and makes the following orders:

1. The Notice of Motion dated 19.10.2011 is allowed in terms of prayer No.1 and 2.
2. The parties to bear their costs.

Dated and Delivered at Machakos, this 13th day of March, 2015.

CHARLES KARIUKI

JUDGE