



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISC. APPLICATION CASE NO. 195 OF 2010

IN THE MATTER OF AN APPLICATION BY PETER MATHEKA KYATU AND PAUL NGUMBAU KYATU FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION DIRECTED AT MAKUENI DISTRICT LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990

AND

IN THE MATTER OF THE DECISION OF THE MAKUENI DISTRICT LAND DISPUTES TRIBUNAL DATED 30TH APRIL 2010, IN RESPECT OF CASE NO. 42 OF 2002 CONCERNING LAND PARCEL NO. UKIA/UTAATI/869 MAKUENI DISTRICT

BETWEEN

PETER MATHEKA KYATU

PAUL NGUMBAU KYATU.....APPLICANTS

(Administrators of the Estate of the Late Gabriel Kyatu Manyala)

MAKUENI DISTRICT LAND DISPUTES...TRIBUNAL RESPONDENT

AND

GRACE NTHAMBI MONI

THERESIA WAYUA NDUNDA.....INTERESTED PARTIES

R U L I N G

1. The application dated 21/12/2011 seeks orders that:-

1. ***“An order of Certiorari do issue directed at the Respondent to remove and bring to this Honourable Court to be quashed, its decision dated 30th April 2010 purportedly dismissing the complaint lodged before it and awarding costs of Kshs.50,000 to itself.*”**

2. **An order of Prohibition do issue to prohibit the Respondent, its servants and/or agents or whomsoever from enforcing the decision/order dated 30th April 2010 by way of execution or in any other manner.**
3. **The Honourable Court be pleased to give further orders and directions as it may deem fit and just.**
4. **Costs be provided.”**

2. According to the affidavit in support and statement of facts and the verifying affidavit, the **Land Disputes Tribunal, Makueni District** proceeded to hear the dispute in connection with Land Parcel No. **Ukia/Utaati/869** when there were orders for maintenance of *status quo* issued in **HCCC Mks 43/2003**. That following the death of the Applicants’ father, the late **Gabriel Kyatu Munyala**, who was the Defendant in the High Court the case was abated.
3. That the orders of the High Court notwithstanding, the Tribunal proceeded with the case before it and proceeded to dismiss the case with costs of Kshs.50,000/=. The Applicant’s complaint is that the Tribunal was chaired by one **Ms. Beatrice Nthitu** who was not appointed as Chairman in accordance with the **Land Disputes Tribunal Act No. 18 of 1990**. That the Tribunal disregarded the order issued by the High Court and failed to comply with the rules of natural justice as the Claimant, **Gabriel Kyatu Munyala** was not heard.
4. The application is opposed. According to the replying affidavit, the Applicant has no capacity to bring the instant proceedings. It is averred that he Applicants have no proprietary rights over the land the subject matter herein. That the proceedings before the **Tribunal** were procedural and that the question of who chaired the **Tribunal** cannot be challenged in the instant proceedings. That in any event there is no evidence exhibited to demonstrate that the said Chairman was not properly appointed.
5. Directions were given that the application be canvassed by way of written submissions. Although the Applicants’ side filed their written submissions, the Respondents and the Interested Parties did not file any. I have considered the written submissions filed.
6. The principal issue is whether the proceedings before the **Tribunal** were carried out in a regular manner. It is not in dispute that the **Tribunal** proceeded to hear the dispute before it when one of the parties had already passed on. The estate of the Claimant was therefore condemned unheard. This was contrary to the rules of natural justice.
7. I have read the ruling in **HCCC 43 of 2003**. It is clear from the said ruling that the prayer for the withdrawal of the proceedings before the **Land Disputes Tribunal, Makueni** was abandoned. The orders made in the said case were for the maintenance of *status quo* between the parties.
8. On whether the **Tribunal** was properly constituted contrary to the provisions **4(2) of the Land Disputes Tribunal Act, No. 18 of 1990**, no material has been placed before the court to show whether Ms Beatrice Nthitu was gazetted or not.
9. On the question of costs, the wording of the decision of the Tribunal in that regard was as follows:-

“The claimant to meet the cost of the Tribunal suit totally Kshs.50,000/=”

It is not clear from the said wording if the **Tribunal** awarded itself costs or awarded the same to the Objectors therein. The said order is therefore vague. The tribunal’s powers are limited to the award of costs to the parties (See **the Land Disputes Tribunal Act (Forms and Procedures) Rules** and not to itself.

10. On the question of the Applicants’ capacity to bring this suit, the Applicants have exhibited a grant for letters of Administration in the estate of their late father, **Gabriel Kyatu Manyala**. The Applicants therefore had the *locus standi* to bring this suit. I have also seen no fatal defects in the verifying affidavit.
11. Having held that the Tribunal proceeded with the case when the Claimant had already passed on, I allow the application as prayed. Taking into account the circumstances of this case, each party to bear own costs.

B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **29th** day of **April, 2015**

B. THURANIRA JADEN

JUDGE