



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

JR MISC. CIVIL APPLICATION NO. 304 OF 2013

**IN THE MATTER OF AN APPLICATION BY KAKUI MUTISO FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITIONS DIRECTED AT
DISTRICT**

COMMISSIONER MACHAKOS

AND

**IN THE MATTER OF THE DECISION OF THE MACHAKOS MINISTERS LAND APPEAL
NO. 181 OF 1988**

BETWEEN

REPUBLICAPPLICANT

VERSUS

DISTRICT COMMISSIONER MACHAKOS..... RESPONDENT

JOEL NZUKI NZIOKA.....INTERESTED PARTY

(FOR THE APPELLANT ESTHER NTHENYA NZIOKA)

***EX-PARTE*:..... KAKUI MUTISO**

DIRECTIONS

1. On 25th July, 2014, this Court after hearing the Notice of Motion dated 23rd August, 2013 herein granted the following orders:
 - a. An order of Certiorari is hereby issued removing into Court for the purposes of being quashed proceedings and ruling/judgment of the District Commissioner Machakos undated and disclosed to the parties therein on 6th August 2013 in Machakos Ministers Land Appeal No. 181 of 1988 which decision is hereby quashed.
 - b. Prohibition directed at the Respondent, its servants and or agents or any land officer/surveyor or whomsoever acting on the basis of the aforesaid ruling/judgment from enforcing the order by way of execution, implementation or causing to be implemented the ruling/judgment made in Machakos Ministers Appeal No. 181 of 1988 or in any other manner.
 - c. The costs of this Application are awarded to the Applicant to be borne by the Respondent.

2. In arriving at the said decision the Court found that the Respondent did not seem to have considered the previous proceedings before the District Officer and the District Commissioner hence the Court was unable to tell what decision the Respondent would have arrived at had he considered the same; that in absence of the evidence to the contrary emanating from the Respondent, the Court was left to determine the matter based on the material on record which did not show that the applicant was afforded an opportunity to be heard after cross examining the deceased; that on the basis of the evidence on record the applicant was never afforded an opportunity of presenting his case before the Respondent hence Respondents decision was tainted by procedural impropriety.
3. It is therefore clear that this Court did not and could not have determined the merits of the dispute by determining the owner of the suit land. Having quashed the decision, the Respondent ought to have taken steps pursuant thereto. The effect of the decision of this Court was that the respondent's decision was quashed leaving the parties in the position they were before the decision was made. Accordingly the Respondent ought to have taken the matter from that position. For avoidance of doubt the position was that the appeal was still pending and remained undetermined.
4. Therefore the decision of this Court ought not to be interpreted to mean that the appeal was determined by this Court in favour of any of the parties. The determination of the appeal is the mandate of the Respondent not this Court and the same ought to be determined in accordance with the law. As was held by the Court of Appeal in **Republic vs. University of Nairobi Civil Application No. Nai. 73 of 2001 [2002] 2 EA 572:**

“It is doubtful whether the university could be prohibited from instituting further disciplinary proceedings after the earlier ones had been quashed unless, of course it was shown that the proposed further proceedings would be contrary to law... Under section 8(2) of the Law Reform Act, the High Court has power to issue the orders of *certiorari*, prohibition and *mandamus* in circumstances in which the High Court of Justice in England would have power to issue them. The point to be canvassed in the intended appeal being whether, in the exercise of his admitted jurisdiction, the learned judge was in fact entitled to, in effect, issue an order of *mandamus* against the University when neither the applicants nor the University had asked for such an order, is clearly arguable. If the superior court had no jurisdiction to order a retrial, then the validity of the subsequent proceedings held pursuant to such an order would themselves be highly questionable...All that the Courts are entitled to do is to ensure that the process of conducting the disciplinary proceedings is in accord with the law, in this case the University of Nairobi Act, and that the rules of natural justice are complied with.”

5. The Respondent, if minded to proceed with the appeal, which as I have held hereinabove remains undetermined, ought to proceed therewith as per the decision of this Court and not deem that this Court directed it to arrive at a particular determination.
6. Directions accordingly and no order as to costs.

Given at Nairobi this 19th June, 2015

G V ODUNGA

JUDGE

Delivered in the presence of:

Mr Mutinda for the Applicant

Mr Nzaku for the Interested Party

Cc Patricia