



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

MISC. APPLICATION No.632 OF 2006

REPUBLICAPPLICANT

VERSUS

LAND DISPUTE TRIBUNAL, MAUCHE.....RESPONDENT

EX-PARTE

DISHON NYUTU MUIRU

AND

WESLY RUGUT.....INTERESTED PARTY

JUDGMENT

(Judicial Review motion to quash award of Land Disputes Tribunal; tribunal hearing a dispute over ownership of land and declaring that the titles of both applicant and interested party be nullified and holding that land is public utility; dispute outside jurisdiction; award quashed and prohibition issued against its adoption).

1. This is a judicial review motion filed on 26 November 2006 pursuant to leave granted on 23 October 2006. The ex-parte applicant has asked for orders of Certiorari and Prohibition, to quash the proceedings and decision of the Mauche Land Disputes Tribunal, in Mauche Land Disputes Tribunal Case No. 2 of 2005, delivered on 6 May 2005. The core reason for this suit is that the proceedings and award are a nullity as the tribunal did not have the requisite jurisdiction to determine the matter.

2. The respondents and interested party did not file any response to this application and the averments of the applicant are therefore uncontroverted.

3. I have seen the award which is sought to be nullified. The dispute before the tribunal was over the land parcel Nakuru/Sururu/843. The claimant in the matter was the interested party in this motion. The complaint was over the ownership of the suit property, which to me, appears to have been claimed by both the ex-parte applicant and the interested party. After hearing the dispute, the tribunal was of the opinion that the suit property is a public utility plot and that the title deeds issued to the ex-parte applicant and the interested party should be revoked. The award was filed at the Chief Magistrate's Court, Nakuru, for adoption vide Nakuru CMCC Land Tribunal Case No. 21 of 2005. The ex-parte applicant moved the court before the award could be adopted and when leave was granted, the court issued a stay of adoption of the award.

4. I have considered the matter. The jurisdiction of the Land Disputes Tribunal (now defunct) was spelt out in the Land Disputes Tribunal Act, Act No. 18 of 1990 (repealed by the Environment and Land Court Act in 2011). Section 3 of the repealed statute provided as follows :-

3. (1) 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.*

5. It will be seen from the above, that the jurisdiction of the Tribunal, was only on matters related to the division or determination of boundaries; claims to occupy or work land; and trespass to land. The Land Disputes Tribunal did not have jurisdiction to issue orders relating to ownership of land and neither did it have power to order the cancellation of titles. This is precisely what the tribunal did in our case. I have no doubt in my mind that the tribunal heard and issued an award over a dispute that it had no jurisdiction to entertain. The award is a nullity and it is hereby quashed. I also issue an order of prohibition, prohibiting the Chief Magistrate's Court, Nakuru, from adopting that award.

6. Costs will be to the applicant.

7. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 21st day of October 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of:

Mr F K Maina for ex-parte applicant

N/A on part of respondent and interested party.

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU