



REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MALINDI

MISCELLANEOUS APPLICATION NO. 20 OF 2011

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW
ORDERS OF CERTIORARI AND PROHIBITION**

AND

**IN THE MATTER OF MAGARINI LAND DISPUTES TRIBUNAL LAND DISPUTE NO. 1/1 OF
2011**

BETWEEN

REPUBLIC.....APPLICANT

AND

WILLIAM NYANG'AU ONGWAE.....EXPARTE APPLICANT

AND

**1. THE CHAIRMAN (JOSHUA CHARO KAZUNGU) MAGARINI LAND DISPUTES
TRIBUNAL**

2. THE CHIEF MAGISTRATE MALINDI LAW COURTS.....RESPONDENTS

AND

1. KACHE BIRYA MAKOMBOA

2. KACHE YERI BARISA

3. FATUMA YERI BARISA

4. JUMWA NGALA SAHANI.....INTERESTED PARTIES

J U D G M E N T

Introduction

1. The Ex-parte Applicant's Notice of Motion before me is dated 19th July, 2011. The Motion seeks for the orders of certiorari to quash the proceedings and award of Magarini Land Disputes Tribunal case number 1/1 of 2011.

The Ex-parte Applicant's case:

2. According to the Ex-parte Applicant's Affidavit, the Interested Parties moved the Tribunal and obtained an award against him.

3. The Ex-parte Applicant deponed that the Magarini Land Disputes Tribunal Case number 1/1 of 2011 dealt with land known as Malindi/Marafa/89 which is registered under the repealed Registered Land Act, Cap 300; that the effect of the award by the Tribunal was to cancel his title and that the Tribunal that heard the case had long ceased to hold office.

4. The Ex-parte Applicant finally deponed that the tribunal did not have jurisdiction to cancel his title deed and that its award was a nullity.

The Interested Parties' case:

5. The 1st Interested Party filed a Replying Affidavit on 28th August 2012 and deponed that the Ex-parte Applicant's Application is bad in law since it is seeking to quash an award which has not been exhibited anywhere.

6. The 1st Interested Party stated that the suit property belongs to their late mother-in-law who was buried on the suit premises and that the Ex-parte Applicant used to work with the land settlement department in Marafa who caused the title deed to the suit property to be issued in his name.

7. The 1st Interested Party finally deponed that the Tribunal did not make orders for the cancellation of the title but only identified the rightful owners of each of the two parcels of land, that is Malindi/Marafa/89 and Malindi/Marafa/98.

The Ex parte Applicant's further affidavit

8. The Ex parte Applicant filed a Further Affidavit and stated that contrary to the Interested Parties' assertion, the award has been annexed on his Affidavit and marked as annexure WNO1 titled "Judgment"; that the allegation of fraud cannot be addressed in these proceedings and finally that the proceedings that were undertaken by the Tribunal were in excess of its authority.

9. The parties filed written submissions which I have considered.

Analysis and findings

10. I have perused the entire Notice of Motion, the Supporting Affidavit, the Further Affidavit and the Verifying Affidavit which accompanied the Application seeking leave to commence the Judicial Review proceedings. I have not come across the proceedings of the Magarini Land Disputes Tribunal Case number 1/1 of 2011 and the award that was made by the said tribunal.

11. The Ex-parte Applicant has deponed that the award he is challenging has been annexed on his affidavit and marked as WNO-1. That annexure, with respect to the Ex-parte Applicant, is not the award of the Tribunal. What the Applicant is referring to as an award is the Judgment of the subordinate court adopting the award of the Tribunal. The said "Judgment" is worded as follows:

"Judgment be and is hereby entered in accordance with the Judgment of the

Land Dispute Number 1/1 of 2011 as in provisions of Land Dispute Tribunal No 18 of 1990 Section 7 (1) and (2)".

12. That adoption of the award by the lower court does not categorically state what the award of the Tribunal was. It simply adopted the award of the Tribunal which has not been annexed on the *Ex-parte* Applicant's Affidavits.

13. Order 53 Rule 7 of the Civil Procedure Rules provides that for an order of certiorari to issue, the Applicant should lodge a copy of the order, warrant, commitment, conviction, inquisition or the record that he seeks to have quashed.

14. In the absence of the award of the Tribunal, I am unable to determine the legality or otherwise of the said award. In the circumstances, I dismiss the *Ex-parte* Applicant's Notice of Motion dated 19th July 2011 with costs.

Dated and Delivered in Malindi this **28th** Day of **February**, 2014.

O. A. Angote

Judge