



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CIVIL MISC. APPLICATION NO. 233 OF 2010

IN THE MATTER OF AN APPLICATION BY

REPUBLIC.....APPLICANT

AGAINST

1. MACHAKOS LAND DISPUTES TRIBUNAL

2. CHIEF MAGISTRATE'S COURT AT MACHAKOS.....RESPONDENTS

NELSON KILONZI.....INTERESTED PARTY

JOSEPH MUASA KELI.....EX PARTE APPLICANT

RULING

1. By an application dated 22/11/2010, the *ex parte* Applicant, **Joseph Muasa Keli** (hereinafter Applicant), seeks an order of *certiorari* to bring into this court for purpose of being quashed the decision by the 1st Respondent/Tribunal in **Land Dispute Case No. 1 of 2008** and the judgment by the 2nd Respondent delivered on 4/5/2010 concerning the title to the applicants land parcel numbers KALAMA/KYANGALA/1644 and KALAMA/KYANGANGALA/1645.

2. According to the Statutory Statement which is supported by the verifying affidavit sworn by the Applicant on 28/10/10 and a supplementary affidavit sworn on 9/11/2010, the Interested Party on or about the 4/3/2008 sued the Applicant before the **Land Disputes Tribunal** (1st Respondent) claiming title to land parcel **No. Kalama/Kyangala/644** and **Land Parcel No. Kalama/Kyangala/1645**. The tribunal's decision was that the 3rd Respondent was the beneficiary of his late mother's share of their father's land. The Tribunal's decision was adopted as a judgment of the court in **CMCC Machakos Misc. 46 of 2009** and a decree issued. The Applicant who is the sole registered proprietor of the parcels of land in question was aggrieved by the said judgment, hence this application. The Applicant contended that the Tribunal lacked the jurisdiction to entertain the claim and acted *ultra vires* and in breach of the rules of natural justice.

3. No papers were filed in opposition to the application. The application was canvassed by way of written submissions. The Respondents and the Interested Party did not file any written submissions.

4. The jurisdiction of the **Land Disputes Tribunal** is circumscribed by **section 3 (1)** of the **Land Disputes Tribunal Act No. 18 of 1990** (now repealed) which provides as follows:-

“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. The Tribunal decision touched on the subdivision of the suit land and the transfer of the same. This was clearly outside the mandate of the Tribunal as provided by the **Land Disputes Tribunal Act No. 18 of 190/10**. The decision by the Tribunal was therefore null and void *ab initio*. Consequently, I allow the application. Each party to meet own costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **20th** day of **March 2014**.

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B. THURANIRA JADEN

JUDGE