



NO. 239.2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CIVIL MISCELLANEOUS APPLICATION NO. 224 OF 2010

REPUBLIC OF KENYA.....APPLICANT

VERSUS

THE DISTRICT LAND DISPUTE TRIBUNAL YATTA.....1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT, MACHAKOS.....2ND RESPONDENT

DISTRICT LAND SURVEYOR, MACHAKOS.....3RD RESPONDENT

AND

MULI NDAMBUKI.....EXPARTE APPLICANT

VERSUS

MWELU NDAMBUKI.....INTERESTED PARTY

J U D G M E N T

1. Leave was granted to the *ex parte* applicant to apply for judicial review in the instant matter on the **27th October, 2010**.

2. This was in regard to an amended Substantive Motion dated **27th May, 2011**, the *ex parte* applicant seeks orders as follows:-

i. An order for prohibition as against the 3rd Respondent from reinstating the boundaries and revoking the title deed in respect of land parcel **Number Machakos/Matuu/602** which was an implementation of the decision of **Yatta sub-District Land Disputes Tribunal**.

ii) An order of mandamus restraining the 2nd Respondent from adopting the decision of the **Yatta District Land Tribunal** dated **29th March, 2005**.

3. The application is premised on grounds that the *ex parte* applicant is the registered proprietor of **Land Parcel Number Machakos Matuu/602**. On the **8th June 1994**; the **Yatta District Land Disputes**

Tribunal had no jurisdiction to entertain any claim as against the *ex parte* applicant as his title was a first registration and the decision or order made against the *ex parte* applicants land is null and *void ab initio*.

4. The application was canvassed by way of written submissions. In his submissions the *ex parte* applicant stated that the Tribunal dealt with land which had a title. It did not have jurisdiction to deal with the same. Its decision is therefore null and void.

5. The interested party did not file a replying affidavit to the motion but filed submissions where it was argued that what was being challenged was reinstatement of the boundary and the adoption of the decision of **Yatta District Land Tribunal**. This gave the **Land Disputes Tribunal** power to deal with the matter.

6. **Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990** (now repealed) stipulated thus:-

“Subject to this Act, all cases of Civil nature involving 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

d. Shall be heard and determined by a tribunal established under section 4”.

7. The **Land Disputes Tribunal** derived jurisdiction from statute which was specific as to what to adjudicate on. The 1st respondent determined the dispute and came up with a verdict reduced into its ruling dated **15th April, 2005**. The order was adopted by the 2nd Respondent who per its decree ordered the 3rd respondent *inter alia* to revoke the existing title deed. The existing title deed alluded to was title number **Machakos/Matuu/602** issued to the *ex parte* applicant on the **8th June, 1994**.

8. The 1st respondent went beyond the limit of its authority by ruling that the title deed held by the *ex parte* applicant be revoked. The order made was null and *void ab initio*.

9. The order sought is for prohibition directed against the 3rd respondent from revoking the title deed. There was no response filed to the application. The order was made in **2009**. I am aware of the fact that an order of prohibition would not quash a decision already made. It only contemplates prevention of an order contemplated (*see Kenya National Examination Council versus Republic Exparte Geoffrey Gathenji Njoroge and Others Civil Appeal No. 266 of 1996 eKLR*). Without any indication of action having been taken by the 2nd Respondent pursuant to the order of the 1st and 2nd respondent, I do issue the order sought.

10. With regard to the order of *mandamus* restraining the 2nd respondent from adopting the decision of the 1st respondent, it was overtaken by events. This court is seized of jurisdiction to grant the order sought but since it has been overtaken by events issuing such an order will be of no use. It will serve no purpose. (*also see Republic versus Judicial Service Commission exparte Pareno [2004] I KLR 203-209*).

11. It is important to point out that this was an ideal case for issuance of an order for *certiorari* to quash the decision of the 1st respondent which unfortunately the *exparte* applicant did not seek.

12. Prayer 1 having been granted costs of the application shall be borne by the interested party.

13. It is so ordered.

DATED, DELIVERED and SIGNED this **3RD** day of **APRIL** 2014.

L.N. MUTENDE

JUDGE