



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL MISC. APPLICATION NO. 2 OF 2007

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDER OF JUDICIAL
REVIEW

AND

IN THE MATTER OF IKUTHA LAND DISPUTES TRIBUNAL LAND CASE NO. 2 OF 2006

AND

IN THE MATTER OF KITUI SENIOR RESIDENT MAGISTRATE'S LAND CASE NO. 71 OF 2006

AND

IN THE MATTER OF INTERPRETATION AND APPLICATION OF THE LAND DISPUTES
TRIBUNAL ACT NO. 18 OF 1990 AND THE PROCEDURES AND RULES MADE PURSUANT
THERE TO

REPUBLIC

APPLICANT

VERSUS

1. IKUTHA LAND DISPUTES TRIBUNAL

2. KITUI SENIOR RESIDENT

MAGISTRATE

3. THE ATTORNEY GENERAL

RESPONDENTS

AND

1. MWIKALI NEE

2. KIMBUI MBINDU INTERESTED

PARTIES

1. MUTISYA KYOSE

2. ISAAC N. MULANDI *EX PARTE*

APPLICANTS

RULING

1. The application (amended) dated 27/5/2008 seeks the following orders:-

1. **That this Honourable Court be pleased to issue orders for Judicial Review directing:-**
 - i. **THAT this Honourable Court be pleased to declare null and void the order of the Kitui Senior Resident Magistrate dated 07/11/2006 and all the proceedings therein and the same be removed and brought forth to be quashed and set aside.**

2. **THAT costs of this application be provided for.**

2. According to the statement of facts and the verifying affidavit, the **Ikutha Division Disputes Tribunal** heard **Land Case No. 2 of 2006** between **Mwikali Nee & Another –vs- Mutisya Kyose & Another** and awarded the Agricultural Plot in dispute to the Interested Parties, **Mwikali Nee** and **Kimbui Mbindu** against the *ex parte* Applicants and recommended that the **Land Registrar** do revoke the title to **Land Parcel No. Ikutha/Mbitini/38** and **Land Parcel No. Ikutha/Mbitini/383**. The award was adopted by the **PM’s Court Kitui** on 7/11/06. It is contended by the Applicants that the **Land Disputes Tribunal** had no jurisdiction to entertain the claim and the award was therefore *ultra vires* the **Land Disputes Tribunal Act No. 18 of 1990**.
3. In opposition to the application, counsel for the Respondent filed the grounds of opposition dated 22/7/2008. In a nutshell, it is stated in the said grounds that **Order LIII rule 1, 2, 3 and 4** of the **Civil Procedure Rules Cap 21 Laws of Kenya** has not been complied with, that the application was irregularly amended and that the application has been filed out of time.
4. The Interested Parties filed a replying affidavit sworn on 26/5/2009. It is averred that the proceedings of the **Land Disputes Tribunal** were conducted in accordance with the rules of natural justice, that the court has jurisdiction over the matter and should order a verification of the title deeds in question to establish their authenticity.
5. The application was canvassed by way of written submissions which I have duly considered.
6. The jurisdiction of the **Land Disputes Tribunal** is stipulated under **section 3** of the **Land Disputes Tribunal Act No. 18 of 1990** 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.”

7. The **Land Disputes Tribunal** had no jurisdiction to entertain the dispute by awarding the land to the Interested Parties and making recommendations to the **Land Registrar**.
8. The **SRM’s Court** had the requisite jurisdiction to adopt the award of the Tribunal. **Section 7 (2)** of the **Land Disputes Tribunal Act No. 18 of 1990** provides as follows:-

“The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”

The magistrate’s court therefore acted within the law.

9. The **Magistrate’s Court** adopted the award on 7/11/2006. The Judicial Review proceedings were commenced on 11/1/2007. This is within the six months period provided for under **Order LIII rule 2** and **section 9** of the **Law Reforms Act**.
10. With the foregoing, the application to declare the order of the magistrate dated 7/11/2006 null and void is misconceived and I hereby dismiss the same with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Kitui this **19th** day of **June** 2014.

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B. THURANIRA JADEN

JUDGE