



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC. CIVIL APPLICATION NO. 196 OF 2009

PETER KAVETA MULATYAAPPLICANT

VERSUS

- 1. EASTERN PROVINCIAL LAND DISPUTES APPEAL COMMITTEE**
- 2. THE PRINCIPAL MAGISTRATE'S COURT AT KITUI....RESPONDENTS**

- 1. JEDIDAH KITHUMBI KISILU**
- 2. JOSEPHAT MWENDWA KITHOME INTERESTED PARTIES**

R U L I N G

1. The **Notice of Motion** dated 26/6/2009 seeks the following orders:-
 - b. **“THAT an order of certiorari do issue to remove into the High Court and quash the decision made by the 1st Respondent on the 23rd day of March 2009 in Case No. 70 of 2008.**
 - c. **THAT an order of prohibition do issue against the Respondent and the Interested Parties herein prohibiting them from applying, enforcing, executing and/or in any manner whatsoever from implementing the decision made on 23rd March 2009 by the 1st Respondent in Appeals Tribunal Case No. 70 of 2008.**
 - d. **THAT an order of prohibition do issue against the 2nd Respondent herein prohibiting the said Respondent from receiving and adopting as judgment the decision made on 23rd March 2009 by the 1st Respondent in Appeals Tribunal Case No. 70 of 2008.**
 - e. **THAT costs of this application be paid to the ex parte Applicant.”**
2. According to the Statutory Statement and the verifying affidavit and the affidavit in support sworn by the ex parte Applicant (hereinafter Applicant) **Peter Kaveta Mulatya**, the **Mutito Land Disputes Tribunal** heard a land dispute between the parties herein. The Applicant was aggrieved by the Tribunal's decision and appealed to the **Eastern Provincial Land Disputes Appeals Committee**. That the Appeals Committee thereafter referred the case to **Kitui Land Disputes Tribunal** for a retrial. The **Kitui Land Disputes Tribunal** ruled in favour of the Applicant. However, the Interested Parties filed an appeal which resulted in the award of the disputed land to the 1st Interested Party.
3. The Applicant's complaint is that the **Kitui Land Disputes Tribunal** and the 1st Respondent acted without jurisdiction and failed to follow the procedures set out in the **Land Disputes Tribunal Act**. It was further stated that the decision by the 1st Respondent went against the

- principle of land ownership in unregistered trust land.
4. On 28/9/2012, the Interested Parties filed a **Notice of Preliminary Objection**. The **Preliminary Objection** calls for the **Notice of Motion** and the entire proceedings to be struck off with costs on the following grounds:-
 1. **Under section 8 of the Land Disputes Tribunals Act, a Judgment/award of the Appeals Committee is final, and can only be challenged on points of law through an appeal in that regard to the High Court, which must be filed within thirty (30) days from the date of the Appeals Committee’s decision.**
 2. **The Appeals Committee’s Judgment/award is NOT subject to confirmation by the Magistrate’s Courts, as the same is final *per se*.**
 3. **The Notice of Motion dated 26/6/2009, and indeed the entire proceedings herein, are incompetent, bad in law, improperly before this Honourable Court, and is/are an abuse of this Honourable Court’s process.”**
 5. The **Preliminary Objection** was canvassed by way of written submissions which I have duly considered.
 6. **Section 8 (9) of the Land Disputes Tribunal provides as follows:-**

“Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved.”

7. The Applicant’s contention that the Appeals Committee was not clothed with the requisite jurisdiction to hear the appeal is not the correct proposition of the law. Section 8 of the **Disputes Land Tribunal Act** gives the Appeals Committee powers to hear appeals from the **Land Disputes Tribunal**. The Appeals Committee had jurisdiction to hear the appeal.
8. Whether the Appeals Committee went against the principle of ownership of trust land and whether the Appeals Committee failed to determine the question of whether the **Land Disputes Tribunal** had the jurisdiction to hear the matter are questions of merits that could have been determined by way of Appeal but not Judicial Review Proceedings.
9. However, there are procedural issues that arise that could be amenable to Judicial Review. The parties before the Appeals Committee are reflected as follows:-

Josephat Mwendwa Kithome & Jedidah Kithumbi Kisuli –vs- Peter Mulatya. It is abundantly clear that **Jedidah Kithumbi Kisuli** was not a party in the proceedings before the **Kitui Land Disputes Tribunal**. This is a procedural defect as the said **Jedidah** was not a party to the dispute before the **Kitui Land Disputes Tribunal**. One party, **Munyithya Musee** who is reflected as a deceased person in the **Kitui Disputes Tribunal** proceedings appears to have been dropped by the Appeals Committee without any substitution. This is another procedural defect in the proceedings. Consequently the **Preliminary Objection** cannot succeed and the same is dismissed with costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 31st day of July 2014.

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B. THURANIRA JADEN

JUDGE