



REPUBLIC OF KENYA

High Court at Mombasa

Miscellaneous Application 9 of 2012

IN THE MATTER OF ESTATE OF: LAND TITLE NO. KWALE/UKUNDA/3614

AND

IN THE MATTER OF: PMCC NO. 21 OF 2008 (LAND CASE)

BETWEEN

JAPATANI HAMISI ABDALLA.....APPLICANT

AND

SONGORO KITENGE MTIMI.....RESPONDENT

RULING

Before this court is the Notice of Motion dated 17th May, 2012 by which **JAPATANI HAMISI ABDALLA** (hereinafter referred to as "*the Applicant*") seeks the following orders:

"1. THAT the orders of the principal magistrate In land cause No. 21 of 2008 be confirmed and made absolute in favour of JAPATANI HAMISI ABDALLA as the proprietor of the parcel of land known as Kwale/Ukunda/3614.

2. THAT the District Land Registrar cancel the title deed held by SONGORO KITENGE MTINI and vest the same in the name of JAPATANI HAMISI ABDALLA – SONGORO KITENGE MTINI to be allocated a portion measuring the size of a kiosk as it had been agreed upon to meet the costs of his money Kshs. 60,000/=."

The Application was supported by the affidavit of the applicant who acted in person. **MR. ANYANZWA** Advocate who appeared for the respondent opposed the application for vesting orders to issue.

This matter arises from a decision of Msambweni Land Disputes Tribunal which awarded the suit land being Kwale/Ukunda/3614 to the Applicant. This award was later adopted by the senior resident magistrate in Kwale land case No. 21 of 2008. In his efforts to have this order executed the applicant has now come before this court seeking to have the vesting order confirmed, and made absolute in favour of himself.

The Respondent through his lawyer raised two main grounds of opposition:

(1) That the Land Disputes Tribunal made a determination on an issue of land ownership in

contravention of section 3(1) of the Land Disputes Act.

(2) That the Land Disputes Tribunal award despite having been adopted by the magistrate in Kwale was null and void to its illegality section 3 of the Land Disputes Tribunal Act limited the jurisdiction of the tribunal to cases of a cruel nature involving disputes as to:

- (a) The division of, or the determination of boundaries to land, including land held in common
- (b) Claim to occupy or work/and or
- (c) Trespass to land.

The history of this matter involved a dispute over ownership of land between the respondent and the applicant's mother. The suit land was registered under the Registered Land Act in the name of the respondent. Section 159 of that Act provides that:

“Civil suits and proceedings relating to title to, or the possession of, land, or to the title to a lease or a charge, registered under this Act, into any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matter in dispute does not exceed twenty five thousand pounds by the resident magistrate's court, or where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunals Act in accordance with that Act.”

Since in this case the dispute revolved over ownership or title to land which does **not** fall under section 3 of the Land Disputes Act then the Land Disputes Tribunal had no jurisdiction to hear and determine the matter. The proper forum to make the determination on ownership was the court. In the case of **M. MARETE – VS – REPUBLIC & 3 OTHERS [2004] eKLR** it was held:

“In our view the dispute before the Tribunal did not relate to boundaries, claim to occupy or work the land, but a claim to ownership. Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under the Registered Land Act to the appellant. In our view the Tribunal acted in excess of its jurisdiction.”

The same situation exists in this case. The Land Disputes Tribunal in Msambweni had no jurisdiction to determine the question of ownership of the suit land. Any attempt by them to do so was '*ultra vires*' its mandate. It proceeded to issue orders which it had no power or authority to issue. Therefore notwithstanding the subsequent adoption of those orders by the magistrate's court in Kwale I find the same to have been a nullity.

I hereby set aside the orders of the Land Disputes Tribunal. The applicant is at liberty to file a suit in relation to his interest in the land before the Land and Environment Court. In view of the foregoing the application to confirm the vesting orders is hereby dismissed. I make no orders on costs.

Dated and delivered in Mombasa this 7th day of February, 2013.

M. ODERO

JUDGE

In the presence of:

Mr. Anyanzwa for the Respondent

Applicant in person