



REPUBLIC OF KENYA

High Court at Bungoma

Civil Suit 74 of 2012

PILISILA NALIAKA BARASA..... APPLICANT

VERSUS

TONGAREN LAND DISPUTES TRIBUNAL

JENIFER SIMIYU
TOBIAS MULAT
MOSES MWANJA
EMMANUEL KIKOCHI

DINA KHAYOTA..... DEFENDANTS

RULING

This judicial review application dated 29th July 2008 seeking orders of certiorari to bring into this court the decision of the Tongaren LDT and quash its decision adopted as an order of the court on 27th May 2008 vide Kimilili RMC Land case no. 11 of 2006.

The decision set to be quashed is contained in the proceedings before the tribunal and read as follows;

“the panel of elders listened carefully, analyzed the evidence adduced before them and came out with the following orders;

- i). the claimant – Michael Wekesa Khaoya gets 6 acres from plot no. Bungoma/Kabisi/181.
- ii). The court Executive Officer to sign the necessary documents as pertains to this land.”

Leave of the court to apply for orders of judicial review was granted to the applicant on 11th July 2008 and the leave operated as stay.

The interested party has been referred to in the pleadings as the 3rd respondent and therefore I will refer to him as thus in this ruling.

The 3rd respondent has filed his respective affidavit challenging the application.

All the respondents also filed written submissions while the applicant did not file any. One of the grounds in favour of the application was that the tribunal fell in error of law when it heard a dispute which had not been properly instituted as there was no statement of claim filed. In response to this issues this court hold that in Judicial review application, the law does not allow the court to deal with the merits or otherwise of the decision. To my mind, this court lacks authority to question the form of how pleadings should look like in such an application. This court will not therefore question whether the dispute was properly instituted or not.

On ground (b), the applicant averred the Tribunal fell in error when it purported to infer trust in favour of 3rd respondent which is beyond its jurisdiction. The 3rd & 5th ground also questioned the issue of jurisdiction.

The 3rd respondent in a document headed “reply of notice of motion” stated that the tribunal never fell in error and since the 3rd respondent is biological brother of the ex-parte applicant, the tribunal was within framework of law to find trust for him.

He also stated the subdivision of the applicant’s land was reached on merit and finally there was no error in respect of jurisdiction.

The 1st and 2nd respondents did not file affidavit but only submissions. The original exparte applicant also passed on and was substituted by Benedicto Juma Barasa who is her legal representative.

Was the tribunal within its mandate from the decision/award it reached? The jurisdiction of the tribunal was given by section 3 (1) of the LDT Act (repealed) which included;

- (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.

From the reading of the 3rd respondents claim before the tribunal last statement of

his evidence reads ***“I am asking this court to assist me get the land mother got***

because this is the truth and my sister also knows”. According to him, the

exparte applicant got registered in trust for him because at the time he did not have an identity card. Is the question of determination of trust governed by the provisions of Sec. 3 (1) or LDT Act? I think not.

It is now settled principle of law that jurisdiction is everything as it confers power and competence to a tribunal.

“The tribunal cannot determine issues concerning ownership of land. Its decision would therefore be a nullity.” These are the words of Justice J. Anyara Emukule in the case of Judicial Review no. 111 of 2011 R. vs. Nyeri Provincial Appeal Board exparte Ruth Mwangi and 11 others.

He stated further while making reference to the case of Anisminic vs. Foreign Compensation Commission

[1969] 2 A.E 147 that the tribunal cannot inquire into a matter in which it has no jurisdiction.

In the instance case, the tribunal awarding the 3rd respondent 6 acres of the suit land is tantamount to enquiring on a matter in which they had no jurisdiction (trust or distributing land amongst siblings) and the same ought to be quashed.

The application is thus allowed, the decision of the Tongaren LDT adopted as an order of court in Kimilili RMC no. 11 of 2006 on 25th May 2008 is called into this court and quashed.

This being suit between family members, I make no orders as to costs.

RULING DATED, SIGNED, READ and DELIVERED in open court this 20th day of March 2013.

A. OMOLLO

JUDGE.