



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 102 OF 2011 (JR)

IN THE MATTER OF: AN APPLICATION BY YUSUF ALI

MWATSAHU FOR JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF: THE LAW REFORM ACT, CHAPTER 26

LAWS OF KENYA

AND

IN THE MATTER OF: THE LAND DISPUTES TRIBUNAL, ACT

ACT NO. 19 OF 1990 LAWS OF KENYA)

AND

IN THE MATTER OF: THE LAND APPEAL CASE NO. 3 OF

2010 BEFORE THE COAST PROVINCIAL LAND DISPUTES APPEALS COMMITTEE

BETWEEN

REPUBLIC APPLICANT

AND

COAST PROVINCIAL LAND DISPUTES APPEALS COMMITTEE

SENIOR RESIDENT MAGISTRATE'S COURT,

KWALE RESPONDENTS

AND

**MLONGO ALI INTERESTED
PARTY**

AND

YUSUF ALI MWATSAHU EXPARTE

APPLICANT

JUDGEMENT

(1) This judgment is in respect to an application for Judicial Review dated 10th October 2011 in which the exparte applicant seeks the following orders-

“An order of Certiorari to issue to remove and bring to this Court for purposes of quashing the award made by the Coast Provincial Land Disputes Appeals Committee, the Respondent herein, and an Order of Prohibition to prohibit the Senior Resident Magistrate’s Court, Kwale from adopting the decision of the Coast Provincial Land Disputes Appeals Committee.”

(2) The Exparte Applicant and the interested party are in dispute as to who owns 1.5 acres of unregistered land situated in Mariakani (the land). An attempt by their classmen to resolve the matter were unsuccessful as the interested party was dissatisfied with their decision. She then lodged a dispute before the Kinango Land Disputes Tribunal which heard a total of 11 witnesses and rendered a verdict in the following words-

“The disputed land belongs to Mlongo Ali Mwadzaya and therefore Yusuf should keep off and find his own land as Mlongo authorized to use the land by her Ali.” (sic)

(3) Exercising his right of appeal provided by Section 8 of the Land Disputes Act (“***the Act***”), the exparte Applicant lodged an appeal against this decision to the Provincial Land Disputes Appeals Committee. The committee upheld the Tribunal’s decision in a determination made on 12th July 2011. That triggered the proceedings now before court.

(4) The Exparte applicant has argued that the Appeals Committee lacked jurisdiction to hear the dispute as it involves ownership of land. Section 3(1) of the Act provides as follows-

“3(1) 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) tress to land,***

shall be heard and determined by a Tribunal established under Section 4.

(5) Section 8 of the Act provides the appeal process from a determination made under Section 3 of the Act. If the Tribunal has no jurisdiction to hear and determine a dispute then its proceedings and determination are null and void *ab initio*. The inevitable consequence will be that an appeal therefrom to Appeals Committee, and therefore its decision, will also be a nullity.

(6) So does the Exparte Applicants claim before the Tribunal fall within disputes in Section 3 of the Act? I have read and understood the proceedings of the Tribunal and the Appeals Committee. There is no escaping from the fact that they involve resolution of a dispute as to who between the Exparte Applicant and the Interested Party owns the land. The Interested Party claims the land as an inter-vivos gift given to her by her late father Ali Mwadzaya. On the other hand the appellant says he has been cultivating the land since 1960. The Tribunal held, in part;

4a’\The Tribunal hereby decided that the disputed land belongs to Mlongo Ali Mwadzaya as she was the one given by her father and has used it for over 30 years.”

4(d) The Objector no reasons (sic) to claim the land as a group ranch as being a group ranch is not entitled but certified, therefore the land belongs to Mlongo Ali Mwadzaya.”

The dispute could be one involving adverse possession and/or, perhaps, inheritance. What is clear though is, that whatever its nature, it involves the ownership of the land.

(7) Having come to that decision, I have to find that the Tribunal overstepped its jurisdiction and acted ultra vires. Its proceedings and decision are a nullity and so are the appeal proceedings and decision therefrom.

(8) It is argued by the interested party that the applicant’s plea for certiorari is time barred by the provisions of Order 53 Rule 2 of The Civil Procedure Rules. The decision sought to be quashed is that of the Appeals Committee made on 12th July 2011. The application for leave was filed on 26th September 2011, only two (2) months had lapsed. This is well within the six (6) months stipulated by Order 53 Rule 2.

(9) It is also argued that the Exparte Applicant is pursuing a vain order as he has not sought the quashing of the proceedings and decision of the Tribunal itself. That seems an attractive proposition but I very much doubt that it is helpful. In reaching the decision that the Appeals Committee proceedings and decision are for quashing, I have had to make a finding that the proceedings and decision before the Tribunal itself were a nullity. Of what efficacy will the award of The Tribunal be to the Interested Party thereafter?

(10) In the result I do hereby grant;

(i) An order of Certiorari do issue quashing the decision of The Provincial Land Dispute Appeals Committee, Coast, in Appeal Case No. 3 of 2010 made on 12th July 2011.

(ii) An order prohibiting the Senior Resident Magistrates Court Kwale from adopting the aforesaid decision of the Appeals Tribunal.

(iii) Costs to the Exparte Applicant.

Dated and delivered at Mombasa this 23rd day of April, 2012.

**F. TUIYOTT
JUDGE**

Dated and delivered in open court in the presence of:-

Obara for Exparte Applicant

Kamau for the Respondents

Ngugi holding brief for Interested Party

Court clerk - Moriasi

**F. TUIYOTT
JUDGE**