



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

Miscellaneous Application 27 of 2011

DANIEL NGUMBAO MENZAPLAINTIFF

VERSUS

THE LAND DISPUTES TRIBUNAL, MAGARINI DISTRICT.....DEFENDANT

JUDGMENT

1. Ngumbao Menza, the *exparte* applicant herein is the undisputed registered owner of a land parcel LR KILIFI/JILORE/43 measuring 2.9Ha, since 1993. In 2010, the 2nd Interested Party, David Kiraga Maktubu filed a claim in the Land dispute Tribunal at Malindi, claiming to have acquired through purchase, the above land parcel.

2. The Land Dispute Tribunal (1st Interested Party) rendered its decision dated 29-4-2011 by which it ordered the *exparte* applicant to surrender and/or transfer a portion of the suit land measuring 71/2 acres and pay shs. 60,000 as “compensation” to the 2nd Interested Party; the 2nd Interested Party to pay a balance of shs. 24,200/- to the *exparte* applicant; and an injunction restraining the *exparte* applicant from interfering with the 2nd Respondent’s peaceful occupation of or trespassing onto the suit property. These orders were adopted as a judgment of the court and a decree issued on 17th May, 2011 by the Malindi Resident Magistrate, the Respondent.

3. The above orders are the subject of these Judicial Review proceedings filed on 7-9-12 by the *exparte* applicant, who, argues that the judgment and decree of the Resident Magistrate is a product of an illegal exercise of the jurisdiction of the 1st Interested Party. According to the *exparte* applicant, the 1st Interested Party in purporting to entertain and determine a claim relating to ownership and possession of land registered under the Registered Land Act acted *ultra vires* the powers conferred on it under the Land Disputes Tribunal Act, therefore that the subsequent decision was a nullity *ab initio*. Hence the decision by the learned Resident Magistrate in adopting the tribunal’s decision is liable for quashing. That in brief is the substance of the *ex parte* applicant’s affidavit and submissions.

4. For this part, the 2nd Interested Party disputes that the 1st Interested Party’s decision touched on ownership of land, but rather occupation. He argues strongly that the *exparte* applicant came to court outside the six months period allowed for bringing Judicial Review proceedings, and points out that the *exparte* applicant has not applied for certiorari orders in respect of the decision of the land disputes Tribunal.

5. Regarding the last two issues, it is clear that the ex parte applicant does not seek an order to quash the tribunal proceedings, perhaps based on the apprehension of the risk that indeed the objection concerning the time limitation raised by the 2nd Interested Party may have merit. That said however, the judgment of the tribunal is date stamped 29th April, 2011. Although the letter forwarding the same to the Chief Magistrate's Court Malindi bears the dated 4th March, 2011, the same appears to have been lodged on 3rd May 2011.

6. In his Replying affidavit, the 2nd Interested Party states as follows:

“the 1st Interested Party (Tribunal) did not make its decision on 29th April, 2011 as alleged by the Ex parte applicant because the letter transmitting its decision to the Respondent was written on 4th March, 2011, the logical inference being that the decision was made either on or before 4th March, 2011...”

7. This vague statement does not assist to ascertain the actual date of the judgment from the affidavit and the court must take the date on the document itself, namely, 29th April, 2011. This disposes of the objection regarding the timeliness of these proceedings.

8. The 2nd Interested Party's argument that the claim before the tribunal related to land occupation is untenable as the tribunal's judgment leaves no doubt that the claim was about land ownership. The tribunal went as far as ordering transfer of the Ex parte applicant's land to the 2nd Interested Party as well as issuing an order for compensation and injunction in the latter's favour. This was clearly outside the legal mandate conferred on the tribunal under the Land Disputes Act. It goes without saying that these orders are a nullity as they were issued without jurisdiction. Hence the subsequent adoption by the Respondent of these orders was a further exercise in futility, an illegality that cannot be allowed to stand.

9. In the circumstances of this case, it matters not that there is no specific prayer of certiorari targeted against the decision of the 1st Interested Party, even though such an inclusion would have been appropriate for completeness' sake.

The court therefore only grants the prayers sought in the Notice of Motion filed on 4th October, 2011. Each party will bear its own costs. It is so ordered.

Delivered and signed at Malindi this 11th day of **May, 2012** in the absence of the parties:

C. W. Meoli
JUDGE