



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

Miscellaneous Application 185 of 2009

1. THE CHAIRMAN MACHAKOS DISTRICT LAND DISPUTES TRIBUNAL

2. THE CHIEF MAGISTRATE, MACHAKOS LAW COURTS RESPONDENTS

AND

REUBEN MUANGE MUTHUSI INTERESTED PARTY

AND

JUDITH MWONGELI MAKAU EX PARTE APPLICANT

R U L I N G

Before me is a Notice of Motion dated 11th June 2009, filed by the *ex-parte* applicant Judith Mwangeli Makau. It was filed under Order LIII Rule 3 of the Civil Procedure Rules. There are two respondents and an interested party named in the application. The prayers are three (3) as follows:-

1. THAT an order of certiorari do issue to remove into this court for purposes of quashing the award of the Machakos District Land Disputes Tribunal Case Number 41 of 2008 dated 8/11/2008 and read to the parties on 7/4/2009 and adopted as a judgment of the court on the same date in Machakos Chief Magistrate Misc. Application Number 197 of 2008.

2. THAT an order of prohibition do issue to the respondents and the interested party prohibiting them from conducting proceedings in respect of Machakos Misc. Appl. Number 197 of 2008 or interfering with the applicant's rights, control and/or peaceful enjoyment of land parcel number Masii/Mithini/705.

3. THAT the costs of this application be borne by the interested party.

The application is grounded on the statement of facts dated 25th May 2009, filed with the Chamber Summons for leave, as well as the supporting affidavit sworn by the *ex-parte* applicant on 25th May 2009, also filed with the Chamber Summons for leave. Annexed to the affidavit were copies of three (3) titles to land, one of which was in the name of the *ex-parte* applicant. The title deeds were issued under the Registered Land Act (Cap 300). The title in the name of the *ex-parte* applicant is for parcel MASII/MITHINI/705, which is the subject of these judicial review proceedings. The other two titles are in the name of the interested party REUBEN MUANGE MUTHUSI.

Both the applicant and the interested party filed their written submissions. The applicant's submissions were filed in June 2011, while the interested party's submissions were filed in July 2011. I have perused the submissions.

On the hearing date, Mr Sila, for the *ex-parte* applicant highlighted the submissions. Mr Ngolya, for the interested party had earlier withdrawn from acting. The interested party was not present in court.

I have perused the documents filed. It is not in dispute that the Land Disputes Tribunal made the following decision.

1. Since the claimant Reuben Muange Muthusi is an adult of sound mind, he is capable of keeping his documents. Therefore this panel hereby recommends that the objector Judith Mwangeli and her mother Susan Munanie are illegally keeping Reuben's Title Deeds and should immediately hand them to the owner.

2. The Tribunal recommends that the two parties in this dispute do sit together and determine the value of the 389 hectares of land which Judith unilaterally acquired from Muthusi's land, so that the hectares of land parcel No. Masii/Mithini/705 can be reduced to match the total expenses which were incurred by Judith Mwangeli the objector. The portion of land thereby curved from parcel No. Masii/Mithini/705 should be registered in ownership of the claimant, Mr Reuben Muange Muthusi.

The above decisions of the Land Disputes Tribunal made on 28th November 2008, are clearly beyond the powers or the jurisdiction of the Land Disputes Tribunal, whose jurisdiction is dictated and limited by Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990. The said jurisdiction is limited to the determination of disputes involving:-

- (a) Division, boundaries to land including land held in common.**
- (b) A claim to occupy land.**
- (c) Trespass to land.**

The Tribunal did not have jurisdiction to order the delivery or release of titles. Nor did it have jurisdiction to order determination of value of the land or methods of compensation. Those are matters which can only be determined in a civil court. I fully agree with what was stated by Lenaola J, in Machakos H.C. Misc. Application No. 209 of 2009 **Republic –vs- Machakos District Land Tribunal and Others – Ex Parte Alfonse Mbindyo Kilove**, that once the Tribunal acts outside jurisdiction, its decision calls for judicial review. The Tribunal having acted outside its jurisdiction, I will have to grant the judicial review prayers sought.

For these reasons, I allow the application and grant both the *certiorari* and prohibition orders sought. The interested party will pay the costs of the *ex-parte* applicant.

Dated and delivered at Machakos this 25th day of **July** 2012.

George Dulu
Judge

In presence of:-
Nyalo – Court clerk

Mr Sila for Ex-parte Applicant present

N/A for other parties.