



REPUBLIC OF KENYA

High Court at Machakos

Civil Miscellaneous Application 260 of 2010

**IN THE MATTER OF PRINCIPAL MAGISTRATE'S COURT AT KITUI CIVIL CASE NO.
L.19/2010**

**IN THE MATTER OF PROCEEDING AND AWARD IN LAND DISPUTE TRIBUNAL KITUI
WEST DISTRICT FILED IN PRINCIPAL MAGISTRATE'S COURT AS LAND CASE NO. L.
19/2010**

IN THE MATTER OF LAND DISPUTE TRIBUNAL ACT NO. 18 OF 1990

REPUBLIC

VERSUS

**THE CHAIRMAN LAND DISPUTE TRIBUNAL KITUI WEST DISTRICT.....RESPONDENT
AND**

JOSEPH MWANIA MUNYITHYA.....1ST INTERESTED PARTY

VETHI NZASA.....2ND INTERESTED PARTY

EXPARTE

ANTHONY KASIMU MUNYITHYA

RULING

The application before court is a Notice of Motion dated 15th December, 2010 in which the applicant seeks for an order of *certiorari* to remove into this court the proceedings and award of the Land Disputes Tribunal, Kitui West District in the Tribunal Case Number 2 of 2010 filed in the Principal Magistrate's Court, Kitui as land case number L.19 of 2010 and read to the parties on 25th October, 2010 for purposes of being quashed. The applicant also prays for costs. The application was filed pursuant to the leave granted to the applicant by **Waweru, J** on 30th November 2010.

The background to the application is that prior to the registration of the land in dispute, being Plot No. 863 hereinafter "*the suit premises*" the applicant had a land dispute under the Land Adjudication Act which was heard all the way to the Minister for Lands by way of an appeal. The minister ruled in the Appeal Case Number, 1447 of 1986 that the suit premises be registered in his name. Apparently, the applicant and 1st interested party are biological brothers whereas the 3rd interested party is a sister in law to both.

The suit premises initially belonged to the applicant and 1st interested party's father, **Munyithya** – deceased. During Land Adjudication, the applicant had the suit premises solely registered in his name. The applicant who was the eldest son was obligated to divide the suit premises amongst his brothers but instead he registered the suit premises in his sole name as the owner. The foregoing notwithstanding he was obligated to hold it in trust for his brothers in accordance with Kamba Customary Law.

When the applicant reneged on the above undertaking, the interested parties approached the respondent for a portion of the suit premises from the applicant on account of being family land. After hearing the claim the respondent ruled thus;-

- “1. The panel has considered the claim of the defendant over the plots as his to be untrue**
- 2. The defendant is using advocate to buy time so as to sell the plots**
- 3. The panel has considered and awarded the two subdivisions of plot 863 part A to Beth Nzasa and Part B to Mwanja Munyithya**
- 4. The panel awarded plot No. 821 to Kasimu Munyithya**
- 5. The panel orders Kasimu Munyithya to pay the costs incurred by both plaintiffs as per attached document.”**

It is this decision that this court is being asked to quash on the basis that the respondent lacked jurisdiction to determine the dispute as it related to ownership of land.

However, the case for the interested parties is that the respondent had jurisdiction to entertain the dispute as it involved division of the family land.

As envisaged under section 3(1) of the Land Disputes Tribunal Act (*now repealed*), the jurisdiction of the Tribunals set up under the said act was limited to hearing cases of civil nature relating to:-

- The division or the determination of boundaries to land including land held in common;
- A claim to occupy or work land, or
- Trespass to land

On the court's own assessment of facts it is clear that the respondent delved in issues of ownership of the suit premises which it had no jurisdiction. There is no doubt at all that the suit premises are registered in the name of the applicant. The nature of the title held by the applicant is absolute. Indeed it is a first registration. This is the suit premises that the respondent awarded to the interested parties and then subdivided it between them. This obviously amounted to deciding on the ownership of the suit premises which in its award the respondent gave to the interested parties. In so doing the respondent acted without jurisdiction. The interested parties have argued that what the respondent did was to divide the land among the sons of the deceased. I do not buy this argument. The jurisdiction to divide the land as envisaged in section 3(1) (a) does not include interference with registered title. The division must be related to boundaries. It does not extend to interference with Registered Land. Such jurisdiction could only be entertained by virtue of section 143(1) of the Registered Land Act (*now repealed*) by either the High Court or the Resident Magistrate's Court.

In the same proceedings, the interested parties seem to argue that the applicant holds the suit premises in trust for them. Indeed this view seems also to guide the interested parties' advocate's submissions. Again a careful reading of the proceedings and decision of the respondent leaves one in no doubt at all that it approached the dispute as one of trust. The respondent had absolutely no jurisdiction to determine the dispute on that basis.

The applicant has also submitted that the procedure laid down under the land Disputes Tribunal Act was not followed. That the claim was filed orally instead of a formal statement of claim in terms of rule 3 of the Land Disputes Tribunal Rules which were couched in mandatory terms, that the claim should be in form "A" of the schedules. The interested parties had no response to this submission and or complaint. From the annexed proceedings before the tribunal, I discern no formal having been claim filed. It seems to me that it was oral. That being the case, how was the applicant expected to launch a successful defence? Section 3(2) of the Land Disputes Tribunals Act provides that every dispute shall be commenced by presenting a claim to the tribunal which will contain only a summary of the material facts on which the claimant intends to rely. Section 3(4) provides further that such claim be served on all the parties to the dispute. It appears that in the present case, once the parties appeared before the respondent they were asked to present their cases which was an ambush to the applicant. The respondent and the interested parties did not follow the procedure which was mandatory. The interested parties having initiated the proceedings before the respondent they were duty bound to operate within the law. Being so initiated it means that the respondent which is a creature of statute had to operate within the mandate given to it by the parent Act and the rules made thereunder.

In sum total, I am persuaded that the proceedings and the award of the respondent were all null and *void ab initio*. Accordingly an order of *certiorari* shall forthwith issue to quash the same. Costs shall be borne by each party as the respondent was not to blame for the predicament facing both of them.

DATED at MACHAKOS this 22ND day of NOVEMBER, 2012.

ASIKE-MAKHANDIA
JUDGE

DATED, SIGNED and **DELIVERED** at MACHAKOS this 30TH day of NOVEMBER, 2012.

GEORGE DULU
JUDGE