



JOSEPH MUSEMBI KIMEIEX-PARTE APPLICANT

VERSUS

1. CHAIRMAN LDT MWALA

2. CHIEF MAGISTRATE, MACHAKOS.....RESPONDENTS

AND

FIDELIS WAEMA MBOLEINTERESTED PARTY

RULING

1. Before me is a Notice of Motion dated 16.3.2007 premised on the provisions of Order LIII of the Civil Procedure Rules and section 9 of the Law Reform Act, Cap 26 Laws of Kenya. The ex-parte Applicant seeks orders of certiorari to quash the decision and award of the Machakos Land Disputes Tribunal dated 3.11.2006 at Mwala in its Case No. 141/2005. An order of prohibition is also sought against the Chief Magistrate, Machakos, to prohibit him from determining any proceeding seeking to enforce the above award.
2. The decision of the Tribunal is worded thus ;

“Today the 13th day of October 2006, the panel sitting at Mwala D.O.’s Office has ruled that, the parcel of land Mbiuni/Katitu/130 should be wholly transferred to Mr. Fidelis Waema and a portion of 0.50 hectares covering the grave of claimants mother be curved from Mbiuni/Katitu/174 and be transferred to Mr. Fidelis Waema.

Read to both parties on 3rd November 2006.

Signed:

1. Stephen M. Kaundu - Chairman

2. Richard M. Kathae -member

3. Christine N. Mwaluko - Member”

3. It is the ex-parte Applicant's case that the above decision is unlawful because the land is registered in his name under the provisions of the Registered Land Act and therefore the Tribunal had no power to purport to determine any dispute arising from it. Further, that the Interested Party had no locus standi to bring the proceeding before the Tribunal as he was doing so on behalf of his deceased mother and lastly, that the Chief Magistrate's Court at Machakos had no proper award before it and it had nothing to execute.
4. Fidelis Waema Mbole in his Replying Affidavit sworn on 24.6.2008 depones that the land in dispute was ancestral land and that the ex-parte Applicant obtained the title to it by fraudulent means. That the Tribunal applied Kamba customary laws in determining the matter and reached a fair decision on the merits since he was entitled to the land through his mother.
5. To my mind, the matter portends no difficulty at all. Land Disputes Tribunals are creatures of statute and that being the case section 3 (1) of the Land Disputes Tribunal Act creates the mandate of such Tribunals. The section provides as follows;

“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. trespass to land,

shall be heard and determined by a Tribunal established

under section 4.”

6. That mandate is strict and cannot be extended to cover issues of ownership to land. The issue of how title was obtained, and whether the ex-parte Applicant acquired that title fraudulently may well be valid arguments by the Interested Party. However, once the Tribunal had no mandate to hear and determine the dispute, the merits become irrelevant. Section 159 of the Registered Land Act provides as follows;

“Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matter in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate’s Court, or, where the dispute comes within the provisions section 3(1) of the Land Disputes Tribunal Act in accordance with that Act.”

7. That section specifically removes the issue of title to land and vests it in the courts, not the Tribunals. Without jurisdiction there is nothing and whatever other issues the parties have raised become irrelevant. Once the award is declared a nullity then there was nothing to be placed before the Chief Magistrate’s Court for enforcement.
8. In the end, the Motion dated 16.3.2007 is clothed with merit and is allowed as prayed.
9. Orders accordingly.

Dated this 19th day of March **2010**.

ISAAC LENAOLA

JUDGE

Countersigned and delivered at **Machakos** this **19th** day of **March 2010**.

H.P.G. WAWERU

JUDGE