



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Miscellaneous Civil Case 228 of 2008

REPUBLICAPPLICANT

VERSUS

1. YATTA SUB-DISTRICT LAND DISPUTE TRIBUNAL

2. MACHAKOS CHIEF MAGISTRATE'S COURT RESPONDENTS

AND

DANIEL K. KIARIE INTERESTED PARTY

BEATRICE KATHINI KULUEX-PARTE APPLICANT

RULING

1. The Notice of Motion dated 2.7.2007 is premised on the provisions of Order LIII Rule 3 of the Civil Procedure Rules and the orders sought are that;

“i. That an order of Certiorari do issue removing

to this Honourable Court for purposes of being quashed the proceedings of Yatta Sub-District Land Disputes Tribunal in its Tribunal Case No. 78 of 2005; and the

Ruling/Award made thereon and dated 24.2.2005 and read to the parties therein by the Chief Magistrate's Court (Machakos) on 22.5.2007.

- ii) *That an order of certiorari do issue removing to this Honourable court for purposes of being quashed the proceedings and orders of Machakos Chief Magistrate's Court dated 22.5.2007 in its Civil Misc. Application no. 44 of 2006 confirming the award made in Yatta Sub-District Land Disputes Tribunal Case No. 78 of 2005 as a judgment of the said court.*
- iii) *That an order of prohibition do issue prohibiting Machakos Chief Magistrate's Court from issuing a decree in its Civil Misc. Application No. 44 of 2006, and from issuing/allowing execution of such decree in any manner whatsoever, or in any other way proceeding with the said case.*
- iv) *That costs of this application and of the proceedings herein the awarded to the ex-parte Applicant."*

2. I have looked at the record and although the Respondents and the Interests Party were all served, I see no response from either of them save that a Notice of Appointment of advocate was filed by M/S L.M. Wambua & Co Advocates on 23.3.2009 on behalf of the Interested Party.

3. The decision under attack was worded as follows:-

"After careful investigation, the panel of elders have discovered that Mr. Daniel Kimani Kiarie purchased the land in dispute in presence of the original owner Mr. Michael Kiilu Musomba. The panel has also noted that after the death of Mr. Michael Kiilu Musomba, his next of kin one Beatrice Kathini Kiilu conspired with one Francis Mutula Mutiso and transferred to him some of her properties to him to evade the buyers and her co- wife possession.

The Land Dispute Tribunal requests the Senior Principal Magistrate's Court to order the District Land Registrar to revoke title deed No Machakos ks/Matuu/4111 and have the same issued to Mr. Daniel Kimani Kiarie. The defendant Mrs Beatrice Kathini Kiilu to bear the costs of the suit."

4. I see that the grounds on which the decision above is challenged are;

"i. under the provisions of the land Disputes

Tribunals Act, and particularly section 3 thereof, Yatta Sub-District Disputes Tribunal had, and still has no jurisdiction to adjudicate on ownership of Registered Land. He Award/Ruling made by the said Tribunal is ultra-vires the

said Act, and therefore a nullity.

- ii) *The said award and the purported confirmation of the same by Machakos Chief Magistrate's Court as a judgment of the said court are nullities, and should be removed to this Honourable court for purposes of being quashed, and should be quashed.*
 - iii) *Land Parcel No. Machakos/Matuu/4111 is within Matuu Town, and falls under Matuu Town Council.*
 - iv) *Land Parcel No. Machakos/Matuu 4111 is not registered in the applicant's name, but in the name of a third party, one Francis Mutula Mutiso, who was not a party to the proceedings before both the Yatta Sub-District Land Disputes Tribunal and Machakos Chief Magistrate's Court.*
 - v) *The said parcel/plot was still registered in the name of the said Francis Mutula Mutiso as at the time the said Tribunal case was filed.*
 - vi) *The Applicant was not given an opportunity by the said Tribunal to give her evidence and to call witnesses; hence the Applicant's rights under both the law and Rules of Natural Justice were seriously breached.*
 - vii) *Yatta is/was, as at the time of the filing and hearing of the said Tribunal case, one of the administrative divisions of Machakos District. Yatta Sub-District Land Disputes Tribunal is/was therefore, an illegal entity lacking both capacity and jurisdiction to purport to hear and determine disputes under the Land Disputes Tribunal Act."*
5. I also note that the ex-parte Applicant, Beatrice Kathini Kiilu in her Verifying Affidavit sworn on 13.6.2007 depones that the land in dispute was originally registered in the name of Musomba Kioko, her father-in-law and later her husband, Michael Kiilu Musomba and through Machakos High Court Succession Case NO. 300/2002, the land was transferred to Mutiso aforesaid as a purchaser from the estate of the late Musomba Kioko. That in 2005, the Interested Party, Daniel Kiarie, filed Yatta Sub-District Land Disputes Tribunal Case No. 78 of 2005 against the ex-parte Applicant claiming that he had purchased the suit land from Michael Kiilu Musomba and the Tribunal agreed with him. It is now contended that the award was a nullity and should be quashed because inter-alia, the Yatta Sub-District Land Disputes Tribunal was an illegal entity and had no jurisdiction to determine the dispute under the Land Disputes Tribunals Act.
6. I wholly agree with submissions by Mrs Nzei advocate for the ex-parte Applicant because firstly, Section 4 of the Land Disputes Tribunals Act 18 of 1990 provides as follows:-

“(1) There shall be established a tribunal, to be called the

Land Disputes Tribunal, for every registration

District.

(2) *Each Tribunal shall consist of-*

(a) *a chairman who shall be appointed from*

time to time by the District Commissioner from the panel of elders appointed under section 5; and

(b) *either two or four elders selected by the*

District Commissioner from a panel of elders appointed under section 5.

7. A Sub-District like Yatta was in 2005 not a registration District and so no proper Tribunal could have been created for it to determine disputes under that Act. A Registration District is defined in section 2 of the Act to mean “*the administrative district in which the land the subject of a dispute is situated.*” Clearly Yatta Sub-District was not such an entity and once the Tribunal’s legal status is in question, its eventual decision was rendered a nullity *ab initio*.

8. Secondly, section 3 of the Act provides the mandate for the Tribunal and even if the present Tribunal had the requisite mandate, and I have said that it did not, then its decision would still have been a nullity for want of jurisdiction as regards the dispute at hand. That section provides as follows:-

“(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. trespass to land,

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

9. I have elsewhere above reproduced the “**Ruling**” of the Tribunal and it is obvious that the issue to be determined was the ownership of the disputed parcel of land and whether the Interested Party had a lawful claim to it. By determining that issue and going further to “**request**” the court to “**order the District Land Registrar to revoke title deed No. Machakos/Matuu/4I11 and have the same issued to Mr. Daniel Kimani Kiarie**” the Tribunal acted in excess of its jurisdiction and for that reason, again its decision was rendered a nullity – see *Anismic Ltd vs Foreign Compensation Commission [1969] 2 AC 147* for a discussion on jurisdictional issues and where a statutory body makes a decision outside its permitted field.

10. Thirdly, I see that the disputed parcel of land is situated in Matuu Township measuring 40x80 feet. Matuu township land is not agricultural land which is defined in section 2 of the Act as land which *inter-alia* is not in a

township or a municipality. Again, by purporting to determine a dispute involving land within a township, the Tribunal acted in excess of its mandate.

11. Lastly, the ex-parte Applicant was never a registered owner of the land in dispute but may have been only the administrator of the estate of the late Musomba Kioko. I have seen the grant in Machakos H.C. Succ Cause No. 300/2002 and the suit property was transmitted to Mutiso vide that cause. The Interested Party did not lay any claim to the land within those proceedings and I am certain that the Tribunal had no mandate to attempt to reverse the findings of this court as regards the persons entitled by succession to the land. That is why the Court of Appeal had this to say in Amunani vs Chairman Sabatia Divisional Land Disputes Tribunal & another C.A. No. 256/2002:

“It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3(1) of the Land Disputes Tribunal Act. By section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrate Court in cases where such latter court has jurisdiction.”

12. I wholly agree and in this case, the whole dispute should have been referred either to this court or the magistrate’s courts.
13. In the end, I see merit in the Application and since the decision was a nullity, the Senior Resident Magistrate’s Court has no business enforcing it.
14. Prayers 1, 2, and 3 of the motion are granted with no order as to costs since the matter is undefended.
15. Orders accordingly.

ISAAC LENAOLA

JUDGE

Countersigned and delivered at **Machakos** this 12TH day of **March 2010**.

H.P.G. WAWERU

JUDGE