



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)**

Miscellaneous Civil Application 1061 of 2007

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL REVIEW BY
JOSPHAT KAMANDE MACHARIA**

AND

**IN THE MATTER OF THE DECISIONS/AWARDS MADE BY THE CENTRAL PROVINCIAL
LAND DISPUTES APPEAL COMMITTEE AND MARAGUA DISTRICT LAND DISPUTES
TRIBUNAL AND THE ORDERS MADE BY THE RESIDENT MAGISTRATE'S COURT AT
MURANG'A**

BETWEEN

**REPUBLICAPPLICANT
VERSUS**

**CENTRAL PROVINCIAL LAND
DISPUTES APPEAL COMMITTEE.....1ST RESPONDENT
MARAGUA DISTRICT LAND**

**DISPUTES TRIBUNAL2ND RESPONDENT
RESIDENT MAGISTRATE'S COURT**

**AT MURANG'A3RD RESPONDENT
AND**

LIVINGSTONE WANYOIKE KING'ARA.....INTERESTED PARTY

J U D G M E N T

1. The application before court is the Notice of Motion dated 12/10/2007 and filed in court on 15/10/2007. The application is expressed to be brought under Order LIII Rule 3 of the Civil Procedure Rules and seek ORDERS

for:-

- (i) *Certiorari to remove to the High Court and quash the decisions of the Central Provincial Land Disputes Appeals Committee made on 26th July 2007 and the Maragua District Land Disputes Tribunal made on 15/03/2007 both named as the 1st and 2nd Respondents respectively in this Notice of Motion; in a land dispute involving the Applicant and the Interested Party.*
- (ii) *Prohibition against the Resident Magistrates Court at Muranga restraining the court from reading/confirming and/or enforcing the said decisions of the 1st and 2nd Respondents.*

2. The Notice of Motion application is premised on the Statement of Facts dated 12/10/2007. The Statement of Facts sets out in summary form the reliefs sought and the grounds upon which the reliefs are sought. There is also a Verifying Affidavit sworn by the Applicant, Mr. Josphat Kamande Macharia on 12/10/2007.
3. From the Statement of Facts, the facts of this case are brief and are as follows. In the year 2005, the Applicant filed a dispute with the Maragua District Land Disputes Tribunal claiming a half share of land in parcels known as LOC.6/KANDANI/1706 and 1707, LOC. 17/SABASABA/1537 all of which parcels are registered in the name of the Interested Party, one Livingstone Wanyoike King'ara. The Maragua District Land Disputes Tribunal heard the parties and thereafter purported to apportion the various parcels of land in the following manner:-
 - (i) *LOCATION 6/KANDANI/1706 and LOCATION 6/KANDANI/1707 registered in the name of the 1st Respondent being ten (10) acres, 7 acres to the 1st Respondent and three (3) acres from LOCATION 6/KANDANI/1707 to the Applicant.*
 - (ii) *The Applicant to move to Land Reference Number LOCATION 6/GIATHANI/1384 in which he holds title within sixty (60) days from the date of the decision.*
 - (iii) *LOCATION 17/SABASABA/1537 to the 1st Respondent absolutely as per the title held by the 1st Respondent.*
4. Being dissatisfied with the decision of the Maragua District Land Disputes Tribunal, the Applicant appealed to the Central Provincial Land Disputes Appeal Committee (the Appeals Committee), and on the 26/07/2007, the Appeals Committee upheld the decision of the Maragua District Land Disputes Tribunal.
5. The Applicant contends that the proceedings of both the Maragua District Land Disputes Tribunal and of the Appeals Committee were ultra vires the provisions of section 3(1) of the Land Disputes Tribunal Act in that the said subsection prohibits Land Disputes Tribunals from dealing with any claims of land ownership or title. The Applicant thus wants this court to call into itself for quashing the two decisions.
6. The Applicants Notice of Motion is also supported by the Applicant's Verifying Affidavit dated 19/09/2007. The Applicant says therein that the 1st Respondent herein, Livingstone Wanyoike Kingara is the Applicant's elder brother and the registered proprietor of LR No. LOCATION 6/KANDANI/1706, LOCATION 6/KANDANI/1707 and LOCATION 17/SABASABA/1537 all totaling 12 acres. The Applicant further depones that the suit land was family land that was registered in the name of the 1st Respondent to hold in trust for himself and for his family. The deponent says that the suit land ought to be shared equally between himself and the 1st Respondent as the two are the sole survivors of the estate of their deceased parents.
7. The Applicant further depones that though he took a complaint to the Maragua District Land Disputes Tribunal, the Tribunal ought not to have heard the dispute because it lacked the jurisdiction to do so since the dispute concerned a land ownership struggle between the Applicant and the 1st Respondent. It is the Applicant's case

that the actions of the District Land Disputes Tribunal and the Appeals Committee were null and void on grounds of lack of jurisdiction. Section 3(1) of the Land Disputes Tribunal Act No. 12 of 1990 confines the jurisdiction of Land Disputes Tribunals to cases of a civil nature involving disputes 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 on land; or*
- (c) *trespass to land*

8. The application is opposed. The Interested Party/Respondent filed a Replying Affidavit sworn on 27/03/2008. The Respondent's position is that the Applicant has no case against the Respondent who is the registered owner of the suit land. The Respondent wants the Applicant to be condemned to pay all the costs in respect of the many suits that the Applicant has filed against the Respondent. The Respondent also wants the Applicant ordered out of the suit land and also restrained from further trespass and/or interference.
9. The 2nd and 3rd Respondents also oppose the Applicant's Notice of Motion application. The 2nd and 3rd Respondents filed Grounds of Opposition dated 11/06/2009 to the effect:
 1. *THAT the Applicant's application herein contravenes section 13A(1) of the Government Proceedings Act, Cap 40.*
 2. *THAT the Applicant has not sought and obtained leave to institute these proceedings.*
 3. *THAT the dispute between the parties was judiciously handled and the rules of natural justice were made applicable to all parties.*
 4. *THAT the Applicant have (sic) not exhausted other remedies and yet judicial review orders are merely discretionary.*
 5. *THAT the application is otherwise an abuse of the court process.*
10. For the above reasons, the 2nd and 3rd Respondents contend that the Applicants' Notice of Motion application dated 12/10/2007 is incompetent and ought to be struck out with costs.
11. This application proceeded by way of written submissions. The Applicant's submissions were dated and filed on 15/07/2009. The Applicant's main grounds of contention is that both the District Land Disputes Tribunal and the Appeals Committee had no jurisdiction under Section 3(1) of the Land Disputes Tribunals Act No. 12 of 1990 to hear and determine the issues that were placed before it. As earlier noted in this ruling, the mandate of the Tribunals is confined to matters of boundary disputes, claims to occupy or work land and trespass to land. The Applicant says that the decisions of the two Tribunals went far beyond their mandate when they both purported to share out the various parcels of the suit land, and thus dealing with ownership of title.
12. The Applicant relied on the case of **Gibson Sengete Matolo –vs- Eastern Provincial Land Disputes Appeals Committee & Others (Judicial Review) – Misc Civil Application No. 331 of 2003** at Nairobi where it was held, inter alia, that

“it does not matter that none of the parties raised the question of jurisdiction at the Appeals Committee or before the District Lands Tribunal. The Appeals Committee acted ultra vires the statute and the entire proceedings became a nullity once it pronounced out the question of ownership or title.”

It is also the Applicant's contention that the provisions of the Government Proceedings Act, Cap 40, and in

particular section 13A (1) thereof are not applicable to Judicial Review Proceedings.

13. I have now considered the application as filed, the submissions made by all the parties and the law. In a nutshell, this application revolves around section 3(1) of the Land Disputes Tribunals Act, No. 12 of 1990. The two questions that arise for determination are (a) whether the two Tribunals acted beyond their mandate and (b) whether the application is properly before this court. I have looked at the Applicants' claim to the Maragua District Land Disputes Tribunal where the Applicant wanted the Tribunal to enforce the decision of the clan to the effect that:-

(a) Loc. 6/KANDANI/1706 and 1707 be shared equally between the Applicant and the 1st Respondent herein.

(b) LOC. 17/SABASABA/1537 be shared an acre a piece between the Applicant and the 1st Respondent

(c) LOC. 6/GIATHAINI/1384 be shared an acre a piece between the Applicant and the 1st Respondent.

The findings (award) of the District Land Disputes Tribunal was three-fold; that is to say:-

(a) The Applicant was ordered to move to LOC 6/GIATHAINI/1384 which was registered in the Applicant's name.

(b) Josphat Kamande Macharia was to be given three (3.0) acres out of LOC. 6/KANDANI/1707.

(c) Livingstone Wanyoike Kingara was to retain LOC. 17/SABASABA/1537 which was registered in his name.

14. There is no doubt from the above findings that the Tribunal at Maragua went beyond its mandate of dealing with determination of boundaries, trespass or claims to occupy or work land. The Applicant's case was not on any of the three mandates of the Tribunal. The Applicant wanted the Tribunal to determine issue of ownership and possession and the Tribunal went right ahead to do so. I entirely agree with Ibrahim J's view in the **Matolo case** (above) that whether or not the question of the Tribunal's jurisdiction was raised, the issue remained central to the Applicant's case. In this case, the District Land Disputes Tribunal acted ultra vires its powers.
15. It follows from the above that the findings of the Appeals Tribunal which purported to confirm the findings of the District Land Disputes Tribunal were also flawed. The District Land Disputes Tribunal award was null and void, and the appeal, based on that award was also null and void.
16. The next issue for determination is whether this application is properly before this court. The Notice of Motion dated 12/10/2007 is expressed to be brought under Order LIII Rule 3 of the Civil Procedure Rules. I have also looked at the Applicants Chamber Summons dated 24/09/2007 by which the Applicant sought leave of the court to commence the Judicial Review Proceedings. That Chamber Summons is expressed to be brought under Order LIII Rule 1 of the Civil Procedure Rules, Section 3A of the Civil Procedure Act and all other enabling provisions of the law.
17. The law is clear that the jurisdiction of this court to hear applications such as the present application and make the orders sought is derived from the Provisions of the Law Reform Act Cap 26 Laws of Kenya and in particular sections 8 and 9 thereof. In the instant application, this court has not been clothed with that jurisdiction. Nowhere has the Applicant cited the said provisions of Cap 26. The courts have held over and over again that failure by an Applicant to cite sections 8 and 9 of the Law Reform Act is fatal to the application for Judicial Review. In the circumstances of this case therefore, the Applicant's application is fatally defective and ought to be struck out.
18. What then is the consequence of the above findings? First, I do find and hold that the decisions which the Applicant herein seeks to call into this court for quashing by way of certiorari and prohibition were made ultra vires the provisions of the governing statute, namely section 3(1) of the Land Disputes Tribunals Act No. 12 of

1990.

19. The above notwithstanding, the said decisions cannot be called into this court for quashing because this court has not been clothed with the jurisdiction to do so. In the premises the Applicant's application dated 12/10/2007 be and is hereby struck out with costs to the Respondents.
20. All other things being equal both the Applicant and the 1st Respondent are at liberty to pursue whatsoever claims each may have concerning the suit lands before any other court of competent jurisdiction.

It is so ordered.

Dated and delivered at Nairobi this 29th day of April, 2010.

R.N. SITATI

JUDGE

Read and delivered in the presence of:-

M/s Njoroge Nyaga (absent but dully served) For the Applicant

M/s Namwamba & Co. (not traced for service) For the Interested Party

AG (refused service saying were never served originally) For Respondents

Weche - Court clerk