



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA

Miscellaneous Civil Application 337 of 2009

REPUBLIC.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....RESPONDENT

AND

HASSAN OMAR MWAGONDZALA.....INTERESTED PARTY

EX-PARTE: SWAHILI BEACH RESORTS LIMITED

JUDGMENT

This is an application for an order of certiorari to quash the decision of the Msambweni Land Disputes Tribunal (hereinafter “*the tribunal*”) and the subsequent decision of the Senior Resident Magistrate at Kwale adopting the said tribunal’s decision. The ex-parte applicant Swahili Beach Resorts Limited (hereinafter “*the applicant*”) also seeks an order of prohibition to prohibit the Land Registrar Kwale from implementing the said decision of the tribunal.

On 31st July 2009, the applicant had obtained leave to seek the said orders pursuant to its Chamber Summons lodged on the same date. The decision sought to be quashed was made on 5th May 2009 in Tribunal Case No. 6 of 2007 and was adopted on 30th July 2009 in Land Case No. 31 of 2009 by the Senior Resident Magistrate’s Court at Kwale.

The application is based on the grounds stated in the statement and verifying affidavit accompanying the application for leave. Those grounds, in the main, are that the applicant is the registered proprietor of Land Parcel No. Kwale/Diani Beach/Block.346 (hereinafter “*the suit land*”) upon which it has heavily invested. Notwithstanding the said registration, in September 2007, the applicant was notified of a land case by Msambweni Land Disputes Tribunal to which the applicant objected and was supported by Msambweni District Officer. The objection was ignored and the tribunal went ahead to order cancellation of the applicant’s title to the suit land thereby provoking these proceedings. In the premises, the applicant contends that the said tribunal had no jurisdiction to deal with the suit land let alone order cancellation of the applicant’s title.

The jurisdiction of a Land Disputes Tribunal is circumscribed by Section 3 (1) of the Land

Disputes Tribunals Act No. 8 of 1990 which reads as follows:-

“3(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.”

Before the Msambweni Land Disputes Tribunal, the Interested Party, Hamisi Omari Mwanganzala, claimed the suit land on the basis that the same belonged to his grandfather and was “*left for their fathers.*” In his own words: “*I am here therefore to be given my whole shamba as a whole from Swahili Beach Resort to the rest of the plot....*” By its “*judgment*” the tribunal concluded as follows:-

“Therefore Land Dispute Tribunal recommends that the District Land Registrar – Kwale to immediately revoke and cancel the title deed currently held by SWAHILI BEACH RESORT and instead issue a new title deed to HAMISI OMARI MWAGANDZALA on behalf of his family members.....”

It is clear therefore that the proceedings before the tribunal related to the title to the suit land and the tribunal’s decision in effect ordered revocation and cancellation of the title held by the applicant and directed the issuance of a new title to the Interested Party. It cannot be gainsaid that the dispute presented to the tribunal by the Interested Party was clearly not within the provisions of section 3(1) of the Land Disputes Tribunals Act and the tribunal obviously had no jurisdiction to entertain that dispute. The Interested Parties dispute can only be tried by the High Court or by the Resident Magistrate’s Court depending on the value of the subject matter. (See section 159 of the Registered Land Act).

In the end, an order of certiorari shall issue removing the decision of the Msambweni Land Disputes Tribunal made on 5th May 2009 in Tribunal Case No. 6 of 2007 and adopted by the Senior Resident Magistrate, Kwale on 30th July 2009 in Land Case No. 31 of 2009, into this court and the same is hereby quashed. An order of prohibition is also hereby issued to prohibit the Land Registrar Kwale from implementing the decision of the said Msambweni Land Disputes Tribunal as regards parcel No. Kwale/Diani Beach Block/341.

The applicant shall have the costs of these proceedings against the Interested Party.

Orders accordingly.

DATED AND DELIVERED AT MOMBASA THIS 21ST DAY OF APRIL 2010.

F. AZANGALALA

JUDGE

Read in the presence of:- Mr. Khatib and Mr. Njoroge for the Respondent.

F. AZANGALALA

JUDGE

21ST APRIL 2010