



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Miscellaneous 294 of 2007

MUTUA WASUNI MUSOMBAAPPLICANT

versus

1. THE ATTORNEY GENERAL

2. HEADMASTER UTUUSYA PRIMARY SCHOOLS RESPONDENTS

JUDGMENT

1. Before me is an Originating Motion dated 22.11.2007. The following orders are sought under section 75, 84, and 123(8) of the Constitution and order 39 Rule & of the Civil Procedure Rules ;

“i) ...

ii) *That the property known as Plot No. Kangundo/Mbilini/1698 in the name of the Applicant not to be transferred (sic) to Respondent and/or any person or body as it is the Applicant’s property.*

iii) *That this court declares that the applicant is the rightful owner of plot known as Plot No. Kangundo/Mbilini /1698.*

iv) *That this court declares that the encroaching of the plot no. Kangundo/Mbilini/1698 by the respondent was illegal and unlawful and the applicant’s fundamental rights as enshrined in the constitution of the Republic of Kenya to wit the protection from deprivation of property under vide section 75 (1) of the Constitution of Kenya.*

v) *That the Applicant be given prompt payment of compensation as provided for under vide section 75 (2) of the Constitution for illegal deprivation of property and the said compensation be determined by the court.*

vi) *That the Respondent be ordered to pay the costs of this originating motion.*

vii) *That such further orders writs and/or directions the Honourable Court may consider appropriate for the purposes of enforcing section 70 and 75 of the constitution in favour of the applicant.”*

2. From the Statement in support of the Motion and the Supporting Affidavit of Mutua Wasuni Musomba sworn on 22.11.2007, it is his case that he got registered over land parcel no. Kangundo/Mbilini/1698 on 24.12.2007 by way of a transmission after succeeding his deceased father vide H.C Succession Cause No 1444/1993 (Machakos). That in March 1999, the Headmaster, Ituusya Primary School started harassing him and so proceedings were instituted in “*the Provincial Tribunal being Case No. 105/2001*” and “the matter was heard “but the “Respondent then instituted “*Civil Misc Application Number 57 of 2001 before the Senior Principal Magistrate’s Court at Machakos for reading of the award of the Tribunal*” but “*the award has never been read to date.*”

3. Further that on 20.9.2007, a crowd of people converged at Ituusya Primary School and then descended on his home which neighbours the school and threatened to attack him and so he ran off to Kangundo Police Station for protection and thereafter he decided to file the present case.
4. There is no response to the Motion and only the Applicant testified before me and produced the title deed for the suit land and photographs showing his house in relation to Ituusya Primary School.
5. In court, the Applicant appeared clearly troubled by the dispute and I note from the file that he variously protested at what he termed in one letter as “*delay*” in finalizing his case. I have read the record and I see no delay in bringing the matter to an end but one would understand any litigant’s desire to bring any dispute to the speediest conclusion. But I digress.
6. I have anxiously considered the Applicant’s Motion and one matter quickly comes to mind;
7. The present dispute was instituted before the Kangundo Land Disputes Tribunal and I have seen annexures “*MWM 7*” in which notice of reading of the award is given within SPM’s Court Civil Misc Application No. 57/2001. The Applicant says that the dispute now before me was the same as in the Tribunal but that the award has never been read to the parties. No explanation has been given and I take the firm view that to make any orders, for or against any party at this stage would create confusion in the administration of justice. The Land Disputes Tribunal is a creature of statute and its decision unless overturned on appeal or by judicial review orders remain lawful. I do not see that there is any prudence in this court making any decision on the dispute while the award of the Tribunal has not been read to the parties in accordance with section 7 of Land Disputes Tribunals Act.
8. The above being the case, I will issue the following orders;
 1. Let the award in SPM’s Court Misc no. 57/2001 (Machakos) be read to the parties, with notice, within 30 days of this order.
 2. This matter to be mentioned for directions on a date to be given at the conclusion of this judgment.
 3. This matter to be concluded thereafter as shall be directed by the Resident Judge, Machakos.

9. Orders accordingly

Isaac Ienaola

Judge

Countersigned and delivered at **Machakos** this **16th** day of **May 2010**

H.P.G. WAWERU

JUDGE