



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CIVIL CASE NO. 27 OF 2009

FRANCIS MAINGI K. NDUMBU PLAINTIFF
VERSUS

MUNYASYA MATOLODEFENDANT

R U L I N G

The Plaintiff has pleaded that he is the registered proprietor of the parcel of land known as **L.R. MATUNGULU/KYAUME/2515** measuring 0.035 hectares (hereinafter called the suit land). The suit land appears to be a plot in a trading centre or some other commercial centre.

The Plaintiff has further pleaded that he bought the suit land from the beneficiaries of the estate of one **KITOILA INGUI** upon which he was subsequently included as a buyer in the list of beneficiaries of the said estate in the certificate of confirmation of grant issued in **Machakos High Court Succession Cause No. 301 of 2004**.

The Plaintiff's case is that on or about 24th October 2006 the Defendant unlawfully and without any justifiable cause trespassed upon the suit land and committed acts of waste therein by digging and laying a foundation, and demolishing fencing and wooden posts. The relief sought is an appropriate permanent injunction against the Defendant. General and special damages are also sought.

The Defendant has denied the Plaintiff's claim. He has pleaded that in or about 1997 he purchased from the widow of a person who had purchased from the estate of the Deceased a plot of land measuring **50ft x 100 ft**. His case is that the plot of land he purchased comprised the original parcel number **MATUNGULU/KYAUME/1540** and that the suit land is a sub-division thereof. He has therefore pleaded that the rights of the persons who purported to sell to the Plaintiff had been extinguished as at 11th January, 2006. He has further pleaded that there was fraud in issuance of the certificate of confirmation in Machakos High Court Succession Case No. 301 of 2004.

He has counterclaimed against the Plaintiff and other persons for an order that the sale of the suit land to the Plaintiff, the confirmation of grant in the said succession cause, and the subsequent transfer of the suit land by way of transmission to the Plaintiff, were without basis, fraudulent and void *ab initio*. He has also sought an order for the registration of the Plaintiff as the proprietor of the suit land to be cancelled and for the land to be registered in his name. The counterclaim has been denied.

The Defendant has applied by notice of motion dated 29th September 2009 for an order that this case be referred to arbitration by the Land Disputes Tribunal, Matungulu District. The application is brought under the inherent powers of the court. The ground for the application is that the Plaintiff's claim is for trespass to land, and that **section 3(1)(c) of the Land Disputes Tribunals Act, 1990** (the Act) vests such jurisdiction to land disputes tribunals. The application is opposed by the Plaintiff.

On 6th October 2009 the court (Lenaola, J) directed that the application be heard by way of written submissions. The Plaintiff filed his submissions on 5th March 2010. Although on 15th April 2010 the court was informed that both parties had filed their submissions, I cannot find any written submissions filed by the Defendant. Be that as it may I have read the supporting and replying affidavits. I have also considered the submissions filed for the Plaintiff.

The jurisdiction of land disputes tribunals is limited to 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.

See **section 3** of the Act.

The Plaintiff's claim is not a mere dispute involving trespass to land. The Plaintiff is seeking to assert the rights of a registered proprietor, and to protect those rights by way of a permanent injunction. A land disputes tribunal cannot grant an injunction. Nor does it have jurisdiction to award general and special damages as sought by the Plaintiff.

In any event, the Defendant's counterclaim has introduced issues that are well beyond the jurisdiction of any land disputes tribunal to deal with. Those issues include the declaration sought to the effect that a certificate of confirmation of grant issued by this court in exercise of its probate and administration jurisdiction was without basis, fraudulent and void *ab initio*.

It ought to be apparent to any one that the present suit would not be appropriate to be referred to a land disputes tribunal. Such tribunal would not have the requisite jurisdiction to deal with any of the issues raised in the suit.

The notice of motion dated 29th September 2009 is without merit and is hereby dismissed with costs to the Plaintiff. It is so ordered.

DATED AT MACHAKOS THIS 20TH DAY OF JULY 2010

H. P. G. WAWERU
JUDGE

DELIVERED THIS 30TH DAY OF JULY 2010