



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KITALE**

**MISC CIVIL APPLICATION NO. 63 OF 2009**

**IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI TO REMOVE INTO THIS HONOURABLE COURT AND**

**QUASH THE DECISION OF KWANZA DIVISIONAL LAND DISPUTES TRIBUNAL WHICH WAS READ AND ADOPTED AS**

**JUDGMENT OF THE COURT ON THE 6/4/20098**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**KWANZA DIVISIONAL LAND DISPUTES )  
TRIBUNAL COMPRISING OF WAFULA BIBI ).....1<sup>ST</sup>  
RESPONDENTS**

**MATAYO NABILIKI )  
KEVIN WAFULA )**

**THE CHIEF MAGISTRATE’S COURT KITALE LAW COURTS ).....2<sup>ND</sup>  
RESPONDENT**

**THE ATTORNEY GENERAL OF THE REPUBLIC OF KENYA ).....3<sup>RD</sup>  
RESPONDENT**

**PATRICK WANYAMA ).....INTERESTED PARTY**

**RULING**

1. Pursuant to an order of leave granted to the *ex parte* applicant on 28<sup>th</sup> July, 2009 he filed a notice of motion seeking for an order of certiorari to remove to this court for purposes of quashing, the decision by the Kwanza Land Disputes Tribunal issued on 18<sup>th</sup> July, 2007 and adopted by the court on 6<sup>th</sup> April, 2009. According to the applicant, he is aggrieved by the decision of Kwanza Land Disputes Tribunal on the grounds that the panel of the elders who heard and determined the dispute was not gazetted as required under section 5 of the Land Disputes Act.

2. The proceedings of the Tribunal were also faulted for failure to comply with the provisions of sections 4 and 6 of the Land Deputes Act because they did not disclose the chairman who presided over the proceedings. Lastly, the tribunal did not give its reasons for their decision. The application is supported by the affidavit of the exparte applicant. He has elaborated on the grounds stated on the body of the application and in the statutory statement. The applicant claims to be the lawful allottee of **plot No. 105/Kampomoi Scheme** which comprises of 5 acres as per his letter of allotment. He claims to have been allotted this parcel of land in 1983 by the Settlement Fund Trustee. The applicant contends that in 2001, he allowed the interested party to take care of the suit plot but the interested party constructed temporary structures without his permission.

3. The decision of the tribunal will in essence force the applicant to sell a portion of his land to the interested party. Counsel for the applicant submitted that the award by the tribunal is not dated or signed. Finally it was submitted that the tribunal operated outside the jurisdiction conferred under section 3 of the Land Disputes Tribunal. The land belongs to the Settlement Fund Trustee thus the order by the tribunal is a nullity.

4. This application was opposed by the interested party, reliance was placed on the replying affidavit by Patrick Wanyama sworn on 11<sup>th</sup> November, 2009. M/s Chege learned counsel for the interested party submitted that it is the exparte applicant who filed the claim before the tribunal. He should have recognized the powers of the tribunal and should not be allowed to acrobate and reprobate. Secondly, the tribunal was properly constituted the proceedings show there were 3 members of the tribunal, the proceedings are also dated 18<sup>th</sup> July, 2007.

5. Moreover, during the hearing, each side was given an opportunity to explain their case. The tribunal considered the evidence and gave their findings which are well reasoned. As regards jurisdiction, there is no bar under section 3 of the Land Disputes Tribunal to determine the issues and considering the objectives of the tribunal, they arrived at a proper determination.

6. This application seeks for a discretionally remedy in the nature of the order of certiorari which can be granted by the High Court on the basis of clear evidence of abuse of power, excess in exercise of jurisdiction or on the grounds that the tribunal that made the decision, did not observe the rules of natural justice. In this case, it is common ground that it is the exparte applicant who filed the dispute before the Kwanza Divisional Lands Tribunal. The first complaint by the applicant is that the panel of the elders who determined the dispute was not gazetted.

7. However, although the applicant annexed a copy of a gazette notice for March 2004, he did not explain to the court how the tribunal which heard his own dispute in 2007 was not gazetted. Similarly the applicant did not explain why he filed a complaint before the tribunal which was not gazetted and why he submitted himself to their jurisdiction as the complainant. The second ground urged by the applicant is that the tribunal was not properly constituted and there is no indication of whether there was a chairman as provided for Under Section 4 of the Land Disputes Act which provides;

**(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.**

8. The ruling of the tribunal indicates the names of three persons who composed the tribunal as follows:-

1. Wafula Bibi
2. Matayo Nabiliki
3. Kevin Wafula

Three elders comprise a panel and of course the Act does not have the rules of procedure that stipulate that the panel must indicate the title of the chairman in the Coram. I agree with counsel for the interested party that one of the elders must have been the chairman. Moreover, the applicant has not shown what prejudice he was caused or why he did not raise the issue, if there was no chairman of the panel during the hearing.

9. The third issue that was raised by the applicant is that the Land Disputes Tribunal acted outside its jurisdiction which is provided for under section 3 of the Act, the Tribunal's jurisdiction is set out 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.**

10. Going through the material on record especially the decision of the tribunal, I am not satisfied that the tribunal acted outside the above parameters. They only determined the claim of occupancy or the right to work on the land. In any event that decision is not capable of enforcement, unless the interested party files a civil case in court, it is a mere declaration. Lastly it was argued that the decision of the tribunal is not dated; there is a date of 18<sup>th</sup> July 2007. That date is written by hand on the front side, if one were to doubt that date, the ruling, is bearing a court stamp date of 25<sup>th</sup> February 2008. That indeed can be taken to be the date of the document.

11. For an applicant to succeed in an application for judicial review, the application should be made within six months from the date the decision sought to be quashed was made.

This application was filled in July 2009, way long after the six months period. For the above reasons, I am not satisfied that the decision by the Kwanza Land Disputes Tribunal which was filed in court on 25<sup>th</sup> February, 2008 should be quashed. The application dated 14<sup>th</sup> August, 2009 is disallowed with costs to the interested party.

**Ruling read and signed this 12<sup>th</sup> day of November, 2010**

**MARTHA KOOME**

**JUDGE**