



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA**

Miscellaneous Civil Application 10 of 2008

REPUBLIC APPLICANT

-VERSUS-

CHAIRMAN MATUGA LAND DISPUTES TRIBUNAL 1ST RESPONDENT

SENIOR RESIDENT MAGISTRATE, KWALE 2ND RESPONDENT

AND

MZEE SAID NGARE KEMKEI INTERESTED PARTY

AND

AMOS WAMUNYU EX-PARTE APPLICANT

RULING

The application before the court is dated 3rd June, 2008 and is brought by a Notice of Motion under O. LIII rule 3(1) of the Civil Procedure Rules. The applicant seeks orders that the judgment of the Kwale Senior Resident Magistrate in Kwale SRMCC Land Case No. 1 of 2008 and the decision of Matuga Land Disputes Tribunal in Case No. 37, Plot No. Kwale/Pungu/Fuel 13 be reviewed to restore the registered owner of the parcel back to his property. He also prays that the Respondent be condemned to pay the costs of this application.

The application is supported by the annexed affidavit of the applicant himself, Amos Wamunyu. It is based on the grounds that the Matuga Land Disputes Tribunal had no jurisdiction to arbitrate over the Title to registered land; that the said Tribunal acted in excess of its jurisdiction by giving ownership of a registered parcel No. Kwale/Pungu/Fuel 13 to the interested party; and that the Kwale Senior Resident Magistrate's Court had no jurisdiction to adopt an illegal judgment of the Tribunal.

Opposing the application is the replying affidavit of Mr. Magolo, counsel for the respondent/interested party. By that affidavit, he challenges the propriety of the application, deposing that there is a similar application pending before the court between the same parties. That affidavit was sworn on 16th July, 2008. It was closely followed by a supplementary affidavit sworn and filed on 25th July, 2005. Thereafter, both sides filed written submissions.

I have considered the pleadings and both the written and oral submissions of Counsel, and have read all the authorities referred to. Shorn of all the technicalities raised by counsel for the respondent, the only issue for determination is whether the Matuga Land Disputes Tribunal had the requisite jurisdiction to adjudicate on a dispute involving a title to registered land. The jurisdiction of Land Disputes Tribunals is set out in Section 3(1) of the Land Disputes Tribunal Act which states-

“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.”

It is evident from the Certificate of Search produced by the applicant that the subject matter of this dispute is the piece or parcel of land Ref No. Kwale/Pungu/Fuel 13 which was registered in the name of the applicant on 14th April, 1978, and a Land Certificate issued to him on 9th March, 1979.

In his opening address at the hearing of this matter before the Tribunal, the Respondent is recorded as having said-

“I have called Mr. Amos Wamunyu (ie the applicant herein) before you the board members to inform you that he owns our shamba which was my grandfather’s ...” (emphasis added)

After hearing the dispute, the Tribunal wrote a short judgment thus-

“JUDGEMENT:

The Board has therefore no element of doubt, but to give this Plot No. KWL/PUNGU FUELO/13 to Mzee Said Ngare Kamran to be absolute soul (sic) proprietor of this Plot with effect from today the 7th day November, 2007.

Hence we advice (sic) the high court to nullify Title Deed of Mr. AMOS WAMUNYU for MR. SAID NGARE KAMRAN ...”

The above record speaks for itself. Section 159 of the Registered Land Act, under which the subject parcel of land is registered, states as follows-

“Civil suits and proceedings relating to the title to, or the possession of, land ... registered under this Act ... shall be tried by the High Court and, where the value of the subject matter in dispute does not exceed twenty thousand pounds, by the Resident Magistrate’s Court, or, where the dispute comes within the provisions of Section 3(!) of the Land Disputes Tribunals Act in accordance with that Act.”

Since the subject parcel of land is registered under the Registered Land Act (Cap. 300, Laws of Kenya), the Tribunal had no jurisdiction to determine any dispute relating to the title thereto. By purporting to do so, the Tribunal acted in excess of its jurisdiction, and therefore its action was ultra vires. Consequently, the Senior Resident Magistrate’s Court, Kwale, should not have adopted a judgment which was ultra vires the tribunal.

I understood counsel for the Respondent to argue that there was a similar application which was pending before the court and that the applicant ought to have proceeded with that other application. There is on record a notice of withdrawal of that other application, and if the Respondent was dissatisfied with that withdrawal, then he should have moved the court formally to stay the hearing of the present application.

In sum, the decision of Matuga Land Disputes Tribunal in case No. 37 in respect of Plot No. Kwale/Pungu/Fuel 13, and the judgment of the Senior Resident Magistrate's Court, Kwale, in SRM Land Cause No. 1 of 2008 are hereby moved to this court and accordingly quashed, with costs to the applicant. It is so ordered.

Dated and delivered at Mombasa this 15th day of May, 2009.

L. NJAGI

JUDGE