



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

Miscellaneous Civil Application 84 of 2007

DAVID GIKUTHA NKARARU.....APPLICANT

V E R S U S

KIRIINYA MUKIIRA.....RESPONDENT

Land Law.

- ü Land Disputes Tribunals Act 1990 (No. 18 of 1990)**
- ü Enforcement of awards of Land Disputes Tribunals**
- ü To be in accordance with Civil Procedure Act with Civil Procedure Rules.**

R U L I N G

By a Miscellaneous Application dated 21st August 2007 brought by way of a Notice of Motion pursuant to the provisions of Sections 3, 3A and 25 of the Civil Procedure Act, and Order XX Rule 19 of the Civil Procedure Rules, and Section 7(2) of the Land Disputes Tribunal Act 1990 (No. 18 of 1990), the applicant herein sought the following orders-

- (1) That the court do direct the Deputy Registrar to sign the Decree in Land Disputes Tribunal Case No. 41 of 2001 in compliance with section 7(2) of the Land Disputes Tribunals Act and/or any other law to facilitate execution thereof;**
- (2) Costs of the application be provided for**

The Application was supported by the Affidavit of the Applicant sworn on 22.08.2007 and the grounds on the face thereof.

The application was opposed by the Respondent and Mr. Manasses Kariuki who urged the application on behalf of Mrs. Ndorongo learned counsel for the Respondent argued that the application was incompetent as it was not clear whether it was a Judicial Review Application or not, that there is no provision in the Land Disputes Tribunals Act enabling the Deputy Registrar to sign a decree, that there was no decision being challenged, that there is no issue to be dealt with by the Deputy Registrar, that this being a matter emanating from the lower or subordinate court, the decree should be signed by the issuing magistrate, not the Deputy Registrar, and that the application is therefore incompetent and be struck out.

In responding to submissions by Mr. Manasses Kariuki, Mr. Ashford Riungu learned counsel for the Applicant submitted that the application was not a Judicial Review matter that the record would show that

the learned Chief Magistrate went beyond the provisions of the Land Disputes Tribunals Act. He was not called upon to visit the suit land, and the visit was illegal as it was against the provisions of Rule 19 of the Land Disputes Tribunal (Forms and Procedure) Rules 1993 (LN No. 13 of 1993) which provides:-

“19 No party to or other person interested therein shall be entitled to appear by or to be represented by an advocate in any proceedings unless a tribunal or appeals committee directs otherwise.”

In this cause, no Tribunal or Appeal Committee had directed the appearance or representation of parties by counsel in any part of the proceedings and that the proposed decree by the Respondent is completely irrelevant and not in conformity with the decision of the elders and ought to be rejected.

I have considered these arguments. The law relating to enforcement of awards by Land Disputes Tribunal is set out in Section 7 of the Land Disputes Tribunals Act, and Rule 20 of the Land Disputes Tribunals (Forms and Procedure) Rules. Section 7 of the Act says:-

7(1) The chairman of the Tribunal shall cause the decision of the tribunal to be filed in the magistrate’s court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”

And Rule 20 of the Rules is in similar vein and says:-

(20) At the conclusion of every dispute the Tribunal shall make a determination to be served on the person affected by the decision and such determination shall be filed in the magistrate’s court, and the court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and be enforceable in the manner provided for under the Civil Procedure Act.

The application herein is brought under the provisions of section 3 and 3A of the Civil Procedure Act (Cap 21, Laws of Kenya) and Order XX rule 19 of the Civil Procedure Rules and Section 7(2) of the Land Disputes Tribunals Act, 1990. I have already cited the provisions of Section 7(2) aforesaid and also the relevant rules under that Act.

Section 3A of the Civil Procedure Act reiterates the courts inherent powers to make orders as may be necessary to meet the ends of justice or to prevent abuse of the court’s process. Section 3 reserves the application of other laws and procedures as set out in other statutes, (like in this case, the Land Disputes Tribunals Forms and Procedure) Rules 1993. Section 25 of the Act merely provides that after the judgment shall follow a decree.

In this matter, the Meru Central **Land Disputes Tribunal Cause No. 110 of 2000** made an award in these terms-

“AWARD”

“After perusing through the evidence and documents given by the claimant, the elders awarded the disputed boundary to be resurveyed again using old map (original map of demarcation). The government expenses to be paid by the person who will be found guilty of erecting illegal boundary.”

That is the award entered by consent of the parties counsel on 22.11.2001 as judgment of the court in terms of Section 7(2) above of the Land Disputes Tribunal Act and Rule 20 of the Land Tribunal Rules. The substance of that award is what was reduced into the draft attached to the affidavit of the Applicant in

support and marked as “**DGN 3**”. In compliance with the requirements of Section 7(2) of the Land Disputes Tribunals Act, and Rules 19 and 20 of the Land Disputes Tribunals (Forms and Procedure) Rules 1993, that **firstly** is the decree that the Chief Magistrate or in his absence, the Senior Principal Magistrate ought to have signed once judgment had been entered in terms of Section 7(2) of the Act. The matter having come to this court by way of the Miscellaneous Application the subject of this Ruling I direct that the said draft be issued under the hand of the Deputy Registrar.

Secondly there is the draft decree attached to the Replying Affidavit of Mrs. Joan Ndorongo learned counsel for the objector. That draft too is the subject of the decision of the Tribunal, not the Chief Magistrate as Mr. Riungu learned counsel for the applicant appears to suggest. It is the final decree following the survey. There is justification for signature of the decree suggested in Mrs. Joan Ndorongo’s Affidavit. It gives effect to the Report of the District Surveyor dated 24th February 2003 and filed in court on 25th February 2003. It closes the chapter arising from the Tribunals award dated 15th June 2001.

In summary therefore the Deputy Registrar will sign two orders, **firstly**, the decree arising from entry as a judgment of the court, the award aforesaid, and **secondly**, the order following the District Surveyors Report aforesaid.

There shall be orders accordingly. Each party to bear its own costs.

Dated, Delivered and Signed At Meru this 12th Day of June 2009

M. J. ANYARA EMUKULE

JUDGE.