



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA
Miscellaneous Civil Application 14 of 2008

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL
REVIEW**

AND

**IN THE MATTER OF: LAND DISPUTES TRIBUNAL ACT
NO. 18 OF 1990**

AND

REPUBLIC APPLICANT

VERSUS

**THE CHAIRMAN PROVINCIAL
LAND DISPUTE TRIBUNAL, COAST PROVINCE ... PLAINTIFF**

VERSUS

THOYA KARISA THOYA INTERESTED PARTY

VERSUS

KIVUTSU KIMEI NGUNDO EX-PARTE APPLICANT

JUDGMENT

On 3.7.2008, Kivutsu Kimei Ngundo, (hereafter “the applicant”) obtained leave to move this court for orders of certiorari to remove into this court and quash the decision of the Provincial Land Disputes tribunal Coast Province in Appeal No. 183 of 2001 made on 22.4.2008. Pursuant to that leave the applicant lodged this Notice of Motion under Order LIII Rule 3 (1) of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act

Seeking an order of certiorari to bring to this court, for the purpose of quashing, the decision of the Provincial Land disputes Tribunal Coast Province made on 22.4.2008 in appeal No. 153 of 2001.

The Notice of Motion is based on the main grounds that the said Tribunal had no jurisdiction to determine the dispute and that the said decision is ultra vires the act which established the Tribunal. The Motion on Notice is supported by an affidavit sworn by the applicant and a statement of facts filed by his advocates. In the affidavit, it is deponed that the applicant has resided upon the suit property for 30 years, his father being the original owner of the land. It is further deponed that in the year 2000, the interested party had lodged a claim over the suit property before Ngwenzeni-Tumba Rabai Land Disputes Tribunal which Tribunal resolved the dispute in favour of the applicant. It is also deponed that in 2006 the Interested Party appealed to the Provincial Land Disputes Tribunal which awarded the suit property to the Interested Party which decision is ultra vires its mandate.

The application is opposed. The Interested Party has filed a replying affidavit and the respondent has filed Grounds of Opposition. In the replying affidavit it is deponed that the provincial Land Appeals Tribunal had jurisdiction to determine the dispute and in the Grounds of Opposition the respondent contends that the application is fatally and incurably defective.

When the application came up before me for hearing on 4.6.2009 counsel agreed to file written submissions which were in place by the 2nd July 2009. The applicant contends that the dispute determined by the said Tribunal fell outside the purview of Section 3 (1) of the Land Disputes Tribunal Act and is therefore null and void and consequently amenable to the prerogative order of certiorari being sought. The Interested Party is of a contrary view contending that the Provincial Land Appeals Tribunal merely corrected a wrong decision made earlier by the Land disputes Tribunal and had jurisdiction to do so. The respondent contended that the body cited is unknown in law and that the applicant should have invoked this court's appellate jurisdiction rather than seek judicial review orders of the court.

I have considered the pleadings, the submissions of counsel and the authorities cited. Having done so, I take the following view of the matter. I will start with the objections raised by the respondent regarding the jurisdiction of this court. The jurisdiction is challenged on the basis that the body whose decision is being challenged is the Provincial Land Disputes Tribunal which is unknown and further that the applicant should have invoked this court's appellate jurisdiction rather than its judicial review jurisdiction.

There is no dispute that Section 8 (1) of the Land Disputes Tribunals Act No. 18 1990 creates an Appeals Committee for each Province in which the land which is the subject of the dispute is situated. In deed the decision being challenged in these proceedings was made by the Provincial Land Disputes Appeals Committee of Coast Province. It was therefore incorrect to describe the body as the Provincial Land Disputes Tribunal Coast Province. In my view however, that was a mere misdescription and does not go to the root of the dispute between the parties. The respondent and the other parties have not been prejudiced by the misdescription. There is clearly no dispute as to whose decision these proceedings are all about. The objection based on the description of the body which made the decision being challenged is therefore overruled.

The second objection is based on the fact that it was not open to the applicant to invoke this court's judicial review jurisdiction when it should have appealed from the decision of the said Appeals Committee under the aforesaid Act. For that proposition, counsel for the respondent relied upon the English decisions of **R. – v – Epping and Harlow General Commissioners Ex-parte Goldshow [1983] 3 ALL ER 257 and R – V – Birmingham City Council Ex-parte Ferro Ltd [1993] ALL ER 530.** With all due respect to counsel, the two cases did not lay down an inexorable rule that judicial review is not available to a party who has an alternative remedy available to him. Indeed the exceptional circumstances under which the option would be exercisable were not fully discussed. In the premises I also overrule the second objection raised by counsel for the respondent.

I can now consider whether the Coast Provincial Appeals Committee had jurisdiction to make the award being challenged by the applicant. The appeal before that committee had been lodged from the decision of Kaloleni District Land Disputes Tribunal No. LAND/KAL 16/2001 which had awarded the suit land to the applicant. The appeals Committee reversed that decision and awarded the suit piece of land to the Interested Party.

The Land Disputes Tribunals Act No. 18 of 1990 clothed Land Tribunals with limited civil jurisdiction over some matters. With regard to originating process, Section 3 (1) of the Act donates the jurisdiction. The Section reads as follows: -

“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.”**

The record shows that the Interested Party claimed the suit property before Ngwenzeni –Jimba Rabai Land Disputes Tribunal. It is not clear whether that Tribunal is the same as the Kaloleni District Land Disputes Tribunal. The same Tribunal case was the subject of the appeal before the Coast Provincial Appeals Committee. The Interested Party’s claim before the said Tribunal was clearly a claim for land. Such a claim was obviously outside the jurisdiction of that Tribunal. The Interested Party lost his claim before the Land Disputes Appeals Committee which awarded the same land to him. It is plain that if the Kaloleni Land Disputes Tribunal had no jurisdiction to entertain the Interested Party’s claim, the appeals Committee could not. The Interested Party’s claim could not be entertained at any level of the Land Disputes Tribunal.

In **Raichand Khimji & Co. – v – Attorney General [1972] EA 536** the following observation was made at p. 540.

“the High Court has power to quash a decision of a statutory tribunal for want of jurisdiction or excess of jurisdiction, breach of rules of Natural Justice, error of law on the face of the record fraud or collusion. In the case of a decision of a statutory tribunal or person exercising judicial or quasi-judicial powers The High Court is usually moved by an application for an order of Mandamus Prohibition or Certiorari as the case may be.”

In the matter at hand, neither the Kaloleni District Land Disputes Tribunal nor the Coast Provincial Appeals Committee had the jurisdiction, to entertain the Interested Party’s claim. In entertaining that claim, the Coast Province Appeals Committee acted in excess of its jurisdiction and for that reason its decision is liable to be quashed.

An order of certiorari shall issue removing the decision of the Provincial Land disputes Appeals Committee Coast Province made on 22nd April 2008 in Appeal Case No. 153 of 2001 into this court and the same is quashed. I will make no order as to costs. It is so ordered.

The Interested Party is at Liberty to file his claim in a court of competent jurisdiction.

DATED AND DELIVERED AT MOMBASA THIS 26TH DAY OF AUGUST 2009.

F. AZANGALALA

JUDGE

Read in the presence of: -

Mr. Njoroge for the respondents.

F. AZANGALALA

JUDGE

26.8.2009