



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

Probate & Administration 303 of 2007

**REPUBLIC
.....APPLICANT**

VERSUS

**THE CHAIRMAN MAKUENI LAND DISPUTES (TULIMANI).....1ST
RESPONDENT**

**RESIDENT MAGISTRATE’S COURT AT TAWA.....2ND
RESPONDENT**

**NTHIWA KASYOKI.....1ST INTERESTED
PARTY**

**JOSEPH KASYOKI MUETE2ND INTERESTED
PARTY**

AND

**MUIA KASIKE.....EX-PARTE
APPLICANT**

RULING

1. The Genesis of the dispute between the ex-parte Applicant, Muia Kasike and the Interested Parties, Nthiwa Kasyoki, and Joseph Kasyoki is that the Interested Party instituted a complaint before the Makueni District Land Tribunal and 29.1.2007 and on 22.2.2007 the complaint was heard. From a reading of the proceedings of the Tribunal and its award, the complaint was that Nthiwa Kasyoki was alleging that his father had sold some land to Muia Kasike and in Nthiwa’s words;

“The land left for us is small and we are 6 brothers and we feel we need the land sold to make it possible for us to build homes and cultivate. We are therefore asking to return the money to Muia Kasike for the part he bought so we can at least have land to live in.”

2. Having heard both parties and having visited the land, the Tribunal decided as follows:-

“The board noted that according to the Kenyans land laws even the customary laws land selling cannot be done without family knowledge and in this case the above laws were not followed. (sic)

The Board therefore accepted the claimants' request that is the objector No.2, Joseph Kasyoki Muete to refund the money he took from Muia Kasike, objector No.1 and stop doing any work on the Plot No. 1128 immediately.

Every party will pay their own expenses on this case."

3. The above decision is being challenged under Order LIII Rule 3 of the Civil Procedure Rules and the ex-parte Applicant by his Notice of Motion dated 16.7.2008 seeks orders that the decision of Tribunal be quashed by an order of certiorari in terms of prayer 1 of the said Motion.

4. The Application was properly served on the Respondents and Interested Party but so far as I can see from the record, there is no opposition to it. Even if there had been a response, I doubt very much whether on the material before me the Application could have failed because firstly, the dispute between the parties related to a contract for sale of land. It was admitted by the Interested Parties that their father indeed sold the disputed parcel of land to the ex-parte Applicant. That they were young at the time is irrelevant as the legality of the contract was not itself challenged. In any event, section 3(1) of the Lands Disputes Tribunal provides as follows:-

"Subject to this Act, all cases of a Civil nature involving a dispute as to-

i. The division of, or the determination of the boundaries to, land, including land held in common.

ii. A claim to occupy or work land; or

iii. Trespass to land,

shall be heard and determined by a Tribunal established under section 4."

5. Issues of contract and issues relating to ownership of land are not such matters as are envisaged by section 3(1) above and I wholly agree with the advocate for the ex-parte Applicant in his submissions that the Tribunal lacked jurisdiction to determine the dispute and therefore in the end its decision was a nullity.

6. Secondly, the ex-parte Applicant has argued that the claim was in any event time-barred. I agree because section 13(3) of the Land Disputes Tribunals Act provides as follows:-

"For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court."

7. In his evidence before the Tribunal, Nthiwa Kasyoki admitted that the sale took place 13 years before the claim was instituted and clearly section 7 of the Limitation of Actions would bar such a claim and section 13(3) above can be properly invoked.

8. Lastly, the Tribunal may well have acted in sympathy when the plight of the Interested Parties is looked at but such sentiments have no place in view of the law. Once the process leading to a decision is flawed, it matters not that the decision may itself be correct and/or meritorious.

9. In the end, I will without further ado grant prayer 1 of the Application dated 16.7.2008.

10. I shall make no order as to costs as the Motion was undefended.

11. Orders accordingly.

Dated and delivered at **Machakos** this **28th** day of **October 2009**.

Isaac Lenaola

Judge

In the presence of; Mr. Makau for applicant

Isaac Lenaola

Judge