



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MOMBASA

Misc Crim Appli 1058 of 2006

1. CHRISTINE SCHNEIDER

2. IBRAHIM SIDIK AS TRUSTEES AND/OR

CUSTODIANS OF THE TSIMBA CHILDREN’S HOME – KWALE ::::::::::::::::::::
APPLICANTS

VERSUS

1. DISTRICT LAND DISPUTE TRIBUNAL(MATUGA DIVISION KWALE)

2. THE SENIOR RESIDENT MAGISTRATE KWALE LAW COURTS ::::::::::::::::::::
RESPONDENTS

AND

MUHAMED SUDI BOYA :::::::::::::::::::: INTERESTED
PARTY

RULING

In this application the Ex-parte Applicants seek the judicial review orders of certiorari and prohibition. The order of certiorari is sought to bring to this court and quash the judgment of the Kwale Senior Resident Magistrate in Land Case No. 9 of 2006 given on 15th June 2006 in which the learned Senior Resident Magistrate purported to enter judgment in accordance with the decision of the Matuga/Kwale Land Disputes Tribunal (the Tribunal). That of prohibition is sought to prohibit the same magistrate from issuing a decree pursuant to that judgment.

The application is based on the grounds that the Tribunal was biased against the Ex-parte Applicants and had no jurisdiction to entertain a matter of title arising from a contract between the Interested Party and the Ex-parte Applicants.

Upon being served the Interested Party filed through counsel grounds of opposition alleging that the application is vexatious, misconceived and an abuse of the process of court and that the orders sought are ambiguous and untenable. The Respondents on their part did not respond. Mrs. Umara, learned State Counsel told me that she has no instructions from them at all.

Though served with the hearing notice neither the Interested Party nor his advocate appeared in court to oppose this application. That notwithstanding I have considered the Interested Party's grounds of opposition and found them to be frivolous and totally unmeritorious.

The Tribunal's record shows the Interested Party's claim before it to have been that he transferred to the Ex-parte Applicants a larger piece of land than he had contracted to sell to them. I agree with Mr. Kibara for the Ex-parte Applicants that that is not a boundary dispute but a claim for the return to the Interested Party a portion of 0.65 of a hectare which he contended was in excess of what he had sold to the Ex-parte Applicants. As Title had already issued to the Ex-parte Applicants the Interested Party's claim went beyond the ambit of the Tribunal's jurisdiction. As this court and the Court of Appeal has held in numerous cases the Land Disputes Tribunals have no jurisdiction under Section 3 of the Lands Disputes Tribunal Act No. 180 of 1990 to entertain matters of title. I therefore allow this application as prayed with costs to the Ex-parte Applicants to be paid by the Interested Party.

DATED and delivered this 17th day of January 2008.

D.K. MARAGA

JUDGE