



REPUBLICAPPLICANT

VERSUS

- 1. THE MSAMBWENI LAND DISPUTES TRIBUNAL**
- 2. THE SENIOR RESIDENT MAGISTRATE, KWALE**
- 3. THE LAND REGISTRAR, KWALE**
- 4. OMARI BAKARI MWACHALA**
- 5. MOHAMED MBARUK**
- 6. ALI MOHAMED KHERI**
- 7. HAMISI AYUBU MWAMJITA**
- 8. SAID SALIMU MWAKOBE**
- 9. JUMA SALIMU MWAKOBE**
- 10. MOHAMED SALIM MWAKOBE**

11. MOHAMED SHEERESPONDENTS

ALLIANCE NOMINEES LIMITED EX-PARTE APPLICANT

R U L I N G

The exparte applicant herein, Alliance Nominees Ltd, took out a notice of motion dated 20th January 2006 pursuant to the provisions of order LIII rule 3 of the Civil Procedure rules. Prior to the filing of the aforesaid motion this court had granted leave to the applicant to institute judicial review proceedings. The record shows that leave was given on 9th January 2006. The motion is grounded upon the Statutory statement and supported by the verifying affidavit of Raymond David Victor Njindo Matiba. Those named as the respondents are Msambweni Land disputes Tribunal, The Senior Resident Magistrate, Kwale, The Land Registrar, Kwale, Mohamed Mbaruk, Omar Bakari Mwachala, Ali Mohamed Kheri, Hamisi Ayubu Mwamjita, Said Salimu Mwakobe, Juma Salim Mwakobe, Mohamed Salim Mwakobe and Mohamed Shee.

When served, the Respondents' opposed the motion. Mohamed Mbaruk, Ali Mohamed Kheri and Omari Bakari Mwachala each filed a replying affidavit. The remaining respondents filed grounds of opposition and two preliminary points of law.

In the motion, the exparte sought for the following orders:

1. **THAT** an order of Certiorari to remove to this Honourable Court for the purposes of quashing the judgment of the Msambweni Land Disputes Tribunal in the Land Dispute Case No. 10 of 2005 between Mohamed Mbaruk and Ali Mohamed Kheri as Claimants and Francis Judah Muoka as the Objector and which judgment though not dated was filed in the Resident Magistrate's Court at Kwale on the 23rd September 2005.
2. **THAT** an order of Certiorari to remove and bring to this Honourable Court for purposes of quashing the order made on the 5th day of October 2005 by Senior Resident Magistrate at Kwale in Land Chase No. 17 of 2005 between Mohamed Mbaruk and Ali Mohamed Kheri as Plaintiff's and Francis Judah Muoka as the Defendant and which order confirmed and adopted the award of the Msambweni Land Disputes Tribunal in terms of the judgment entered in the said Land Case No. 10 of 2005.
3. **THAT** an order of Prohibition to issue directed to the Land Registrar Kwale prohibiting the Land Registrar from revoking and canceling the title deed for Plot No. KWALE/GALU/KINONDO/667 issued to and held by the Applicant and from issuing a fresh title deed for the Plot in favour of Mohamed Mbaruk and Ali Mohamed Kheri.
4. **THAT** an order of Certiorari to remove to this Honourable Court for the purposes of quashing the judgment of the Msambweni Land Disputes Tribunal in the Land Dispute Case No. 13 of 2005 between Hamisi Ayubu Mwamjita, Said Salimu Mwakobe, Juma Salim Mwakobe, Mohamed Salim Mwakobe and Mohamed Suleiman Shee as Claimants and Francis Judah Muoka and

Alliance Nominees Limited as the Objectors and which judgment is dated the 29th day of November.

5. **THAT** an order of prohibition to issue directed to the Senior Resident Magistrate Kwale prohibiting the Senior Resident Magistrate from reading, confirming and/or adopting the award of the Msambweni Land Disputes Tribunal in the said Case No. 13 of 2005 on the 25th day of January 2006 when the said judgment of the Tribunal is to be delivered in the Land Dispute Case No. 32 of 2005 filed in the Resident Magistrate Court at Kwale on 30th December 2005.
6. **THAT** an order of prohibition to issue directed to the Land Registrar Kwale prohibiting the Land Registrar from revoking and canceling the title deed for Plot No. KWALE/GALU/KINONDO/668 issued to and held by the Applicant and from issuing a fresh title deed to Hamisi Ayubu Mwamjita, Said Salimu Mwakobe, Juma Salim Mwakobe, Mohamed Salim Mwakobe and Mohamed Suleiman Shee.
7. **THAT** an order of Certiorari to remove to this Honourable Court for the purposes of quashing the judgment of the Msambweni Land Dispute Tribunal in the Land Dispute Case No. 7 of 2005 between Omari Bakari Mwachala as Claimant and Robert Matano and Alliance Nominees Limited as the Objectors and which judgment is dated 25th day of October 2005.
8. **THAT** an order of Certiorari to remove and bring to this Honourable Court for the purposes of quashing the order made on the 29th day of November 2005 by the Senior Resident Magistrate at Kwale in Land Case No. 27 of 2005 between Omari Bakari Mwachala as the Plaintiff and Robert Matano and

Alliance Nominees Limited as the Defendants and which order adopted the award of the Msambweni Land Disputes Tribunal in terms of the judgment entered by the Tribunal in the said Land Dispute Case No. 7 of 2005.

9. **THAT** an order of prohibition to issue directed to the Land Registrar Kwale prohibiting the Land Registrar from revoking and nullifying the title deed for Plot No.

KWALE/GALU/KINONDO/669 issued to and held by the Applicant and from issuing a fresh title deed in favour of Juma Salim Mwachidato, Omari Bakari Mwachala, Ali Bakari Mwachala and Athman Said Rimo.

10. **THAT** the costs of this application be provided for.

When the motion came up for interpartes hearing on 7th May 2008, learned advocates for the parties beseeched this court to approve and adopt a compromise reached by the parties in a consent order dated 6th March 2008 and duly approved by the Deputy Registrar of this court on 9th April 2008. I have perused the aforesaid consent order. Basically the consent order settles the dispute in terms of the prayers set out in the motion dated 20th January 2006. the consent order provides as follows:

“IT IS HEREBY ORDERED BY CONSENT

1. **THAT** an order of Certiorari be and is hereby granted to remove to this Honourable Court for the purposes of quashing the judgment of the Msambweni Land Disputes Tribunal in the Land Dispute Case no. 10 of 2005 between Mohamed Mbaruk and Ali Mohamed Kheri as Claimants and Francis Judah Muoka as the Objector and which judgment though not dated was filed in the Resident Magistrate’s Court at Kwale on the 23rd September 2005.
2. **THAT** an order of Certiorari be and is hereby granted to remove and bring to this Honourable court for purposes of quashing the order made on the 5th day of October 2005 by Senior Resident Magistrate at Kwale in Land Case No. 17 of 2005 between Mohamed Mbaruk and Ali Mohamed Kheri as Plaintiffs and Francis Judah Muoka as the Defendant and which order confirmed and adopted the award of the Msambweni Land Disputes Land Tribunal in terms of the judgment entered in the said Land Case No. 10 of 2005.
3. **THAT** an order of Prohibition be and is hereby granted to issue directed to the Land Registrar Kwale prohibiting the Land Registrar from revoking and canceling the title deed for Plot No. KWALE/GALU/KINONDO/667 issued to and held by the Ex-parte Applicant and from issuing a fresh title deed for the Plot in favour of Mohamed Mbaruk and Ali Mohamed Kheri.
4. **THAT** an order of Certiorari be and is hereby granted to remove to this Honourable Court for the purposes of quashing the judgment of the Msambweni Land Disputes Tribunal in the Land Dispute Case No. 13 of 2005 between Hamisi Ayubu Mwamjita, Said Salimu Mwakobe, Juma Salim Mwakobe, Mohamed Salim Mwakobe and Mohamed Suleiman Shee as Claimants and Francis Judah Muoka and Alliance Nominees Limited as the Objectors and which judgment is dated the 29th day of November

2005.

5. **THAT** an order of prohibiting be and is hereby granted to issue directed to the Senior Resident Magistrate Kwale prohibiting the Senior Resident Magistrate from reading confirming and/or adopting the award of the Msambweni Land Disputes Tribunal in the said Case No. 13 of 2005 on the 25th day of January 2006 when the said judgment of the Tribunal is to be delivered in the Land Dispute case NO. 32 of 2005 filed in the Resident Magistrate Court at Kwale on 30th December 2005.

6. **THAT** an order of prohibiting be and is hereby granted to issue directed to the Land Registrar Kwale Prohibiting the Land Registrar from revoking and canceling the title deed for Plot No. KWALE/GALU/KINONDO/668 issued to and held by the Ex-parte Applicant and from issuing a fresh title deed to Hamisi Ayubu Mwamjita, Said Salimu Mwakobe, Juma Salim Mwakobe, Mohamed Salim Mwakobe and Mohamed Suleiman Shee.

7. **THAT** an order of Certiorari be and is hereby granted to remove to this Honourable Court for the purposes of quashing the judgment of the Msambweni Land Dispute Tribunal in the Land Dispute Case No. 7 of 2005 between Omari Bakari Mwachala as Claimant and Robert Matano and Alliance Nominees Limited as the Objectors and which judgment is dated 25th day of October 2005.

8. **THAT** an order of Certiorari be and is hereby granted to remove and bring to this Honourable Court for the purposes of quashing the order made on the 29th day of November, 2005 by the Senior Resident Magistrate at Kwale in Land Case No. 27 of 2005 between Omari Bakari Mwachala as the Plaintiff and Robert Matano and Alliance Nominees Limited as the Defendants and which order adopted the award of the Msambweni Land Disputes Tribunal in terms of the judgment entered by the Tribunal in the said Land dispute Case No. 7 of 2005.

9. **THAT** an order of prohibition be and is hereby granted to issue directed to the Land Registrar Kwale prohibiting the Land Registrar from revoking and nullifying the title deed for plot No. KWALE/GALU/KINONDO/669 issued to and held by the Ex-parte Applicant and from issuing a fresh title deed in favour of Juma Salim Mwachidato, Omari Bakari Mwachala, Ali Bakari Mwachala and Athman Said Rimo.

10. **THAT** each party to bear its own costs.”

I have carefully perused the pleadings filed herein. I have also keenly perused the consent order and I am convinced the judicial review proceedings were filed within the statutory period. I am also satisfied that the judicial review orders sought by the exparte applicant are issuable as public law remedies. Having come to the above conclusion, I approve the consent comprising of these proceedings dated 6th March 2008.

Dated and delivered at Mombasa this 5th day of May 2008.

J. K. SERGON

J U D G E

In open court in the presence of Mr. Obara h/b Oddiaga for 4-11th Respondent and Mr. Nyongesa for Exparte Applicant.