



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Misc. Appli. 55 of 2007

CHARLES SZLAPAK.....APPELLANT

Versus

THE LAND DISPUTES TRIBUNAL

MSAMBWENI DIVISION.....RESPONDENT

JUDGMENT

The ex parte Applicant Charles Szlapak filed the Notice of Motion dated 19th February 2007 seeking an order of prohibition prohibiting the Land Disputes Tribunal (LDT) Msambweni Division from proceeding any further or taking any other step in any manner whatsoever with the hearing and determination of any dispute relating to the ownership of Title numbers Mombasa/Mainland South/Diani Beach/982 and 983, properties registered under the Registered Land Act (RLA) and from making any adverse orders in any manner whatsoever affecting the suit land at any time now or in future. The Applicant also asks for costs of the application. The Coast Community House is named as an Interested Party.

The motion is supported by a statutory statement dated 1st February 2007 and the verifying affidavit of the Applicant of the same date. The Respondent and Interested Party, despite being served with the Notice of Motion, did not appear nor did they file any reply. The court proceeded with the hearing ex parte having been satisfied with the service. The Applicant deposed that he is the registered owner of plot 982 and 983 which were subdivided from No. 28 and that the said land is residential not agricultural.

That he purchased the land in 1982 from Theodorus Oberholzer. He exhibited the title CS1 and certificate issued under the Registration of Titles Act (RTA) CS2. That he received a hearing notice on 15th January 2007 from the LDT Msambweni concerning a dispute between Coast Community House against him relating to the suit land. To the hearing notice was annexed the statement of claim which related to land Kwale/Diani Breach/28 measuring 22.0 acres. The Interested Parties were claiming that the land was their ancestral land. The Applicant contends that a claim to land cannot lie after 25 years since he bought the land in 1982. That the LDT had no jurisdiction to deal with registered land and that the tribunal was not properly constituted.

Section 3 of the LDT Act limits the jurisdiction of the Tribunal. It provides:

“3(1) 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;
- (c) trespass to land.

Shall be heard and determined by a tribunal established under Section 4”

There is a wealth of case law in support of that position

1. R V THE CHAIRMAN LURAMBI LDT KAKAMEGA (2006) IKLR
2. R V THE CHAIRMAN LDT MWINGI COURT & ANOTHER (2004) KLR
3. R V KAJIADO LDT & OTHERS (2006) IEA 318

S. 159 of the RLA vests the jurisdiction to hear matters relating to claim over registered land in the High Court or the magistrate’s courts depending on the pecuniary value of the subject land. Since the suit land was already registered and the claim was over ownership, the Tribunal had no jurisdiction to deal with it.

S. 13 (3) of the LDT Act provides that the tribunal shall not entertain claims in respect of which the time for bringing them is barred by limitation. In the instant case, the Interested Parties were moving the tribunal in 2006 when Johnson Theodorus Oberholzar had already transferred the lease to the Applicant in 1982 which is about 25 years ago. An action to recover land can only be brought within 12 years as provided by per S.7 of the Limitation of Actions Act Cap 22 (Laws of Kenya). The claim of the Interested Parties was extinguished after 12 years from 1982 that is, in 1994 and their claim would therefore not see the light of day and should not have been entertained.

It is also the Applicant’s contention that the triubunal was illegally constituted as it was not among the gazetted Districts for which Tribunals were established by the Minister for Lands & Settlement under Legal Notice 181/03.

Though the names of the members of the Tribunal were listed in the Gazette Notice 5107 of 9th July 2004, the District under which they appear is Kwale not Msambweni. They should have been serving in Kwale not Msambweni.

For all the above reasons and considering the fact that neither the Respondents nor the Interested Parties opposed the motion, I find that the Applicants are entitled to the order of prohibition as sought and the same is granted with the Respondents bearing the costs of the Motion.

Dated and delivered this 30th day of June 2008.

R.P.V. WENDOH

JUDGE

Read in the presence of:

Mr. Gichuhi for Applicant

Daniel Court Clerk