



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Misc. Appli. 195 of 2007

SOLOMON NGURE..... APPLICANT

V E R S U S

KAJIADO DISTRICT LAND DISPUTES TRIBUNAL

BENJAMIN MAORA

MOSES RAKITA

PAITA OLE KIONO

RESPONDENTS

PAUL MEILIARA

JOSEPH SILANKE

J U D G M E N T

This is a Notice of Motion dated 20th March, 2007 filed by M/s Njenga Mbugua & Nyanjui advocates on behalf of the ex parte applicant SOLOMON NGURE, who came to court on behalf of HAKA AGE GROUP 1948. It was filed under Order 53 rule 3 of the Civil Procedure rules, Section 8 and 9 of the Law Reform Act (*Cap 26*) and all other enabling provisions of the law. It seeks for one order, that is-

AN ORDER OF CERTIORARI to remove into this Honourable court for the purposes of being quashed the decision/award of Kajiado Land Disputes Tribunal conferring ownership/title of land namely KJD/KISAJU/1172 in favour of the applicant.

The application has four grounds on the face of the Notice of Motion. The grounds are as follows-

- (a) *The applicants are the registered owners of plot number KJD/KISAJU/1173 upon which one KENNEDY KOIKAI who owns the neighbouring parcel known as KJD/KISAJU/1171 has trespassed and erected illegal structures.*
- (b) *The applicants referred the matter to the District Land Tribunal for adjudication on the issue of boundaries.*
- (c) *The respondents without jurisdiction and powers proceeded to arbitrate and determine the issue of ownership of the two parcels of land and therefore their decision was ultra vires the powers conferred*

upon them.

(d) *The Tribunal acted in excess of the powers conferred upon them.*

The application was not opposed as no response was filed on behalf of the Kajiado District Land Disputes Tribunal or by Kennedy Koikai. They appear to have been served.

There is filed with the supporting affidavit to the application for leave, a copy of a title deed under the Registered Land Act (Cap. 300), marked as SNI relating to KJD/KISAJU/1173 (2.023 hectares) in the name of UTHIRU HARAHA AGE GROUP. The title was issued on 8th September, 1997. There was also filed as annexure SN2 the decision of the Kajiado District Land Disputes Tribunal in Tribunal Claim No. 311/02/06 which is said to relate to parcel number KJD/KISAJU/1171/1172.

The decision of the Tribunal with regard to the dispute before them was as follows-

§ *Since the tribunal visited the site and found a 9 acre piece of land intact registration No. Kajiado/Kisaju/1172 it should be registered in favour of the claimants.*

§ *The objector to remain in the land he now occupies L.R. No. Kaj/Kisaju/1171 to which he has developed.*

§ *The claimants to pay for the survey fee and stamp duty for processing of their documents on the 9 acres piece of land.*

§ *The District Registrar to register a transfer document of land No. 1172 in favour of the claimants and issue them with a title deed.*

The applicant has not come to court seeking to quash the Tribunal's decision with regard to land parcel Kajiado/Kisaju/1172.

It is my finding that indeed the Tribunal went out of its jurisdiction by purporting to determine title or ownership to registered land; and giving directives to Registrar to register transfer documents. This is so because the jurisdiction of the Tribunal is limited by Section 3 (1) and (7) of the Land Disputes Tribunal Act No. 18 of 1994, which states-

3 (1) subject to this Act, all cases of a civil

nature involving a dispute as to-

(a) *division of, or the determination of boundaries to land, including land held in common;*

(b) *a claim to occupy or work on land; or*

(c) *trespass to land.*

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

Subsection (7) provides-

(7) *The Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognized customary law, after hearing parties to the dispute, any witness or witnesses whom they wish to call and their submissions, if any, and each party shall be afforded an opportunity to question the other party's witness or witnesses.*

From the above provisions of the law it is clear to me that the powers of the Tribunal under Section 3 (1) (a) (b), and (c) are limited to customary land rights and reliefs as provided for under sub-section (7), and

do not cover statutory rights or reliefs that are not known to customary law. The jurisdiction of the Tribunal does not extend to issues related to statutory title, or registration of transfers of statutory title. Therefore the decision of the Tribunal which appears to determine title to registered land, was *ultra vires*, null and void.

I however, have to mention that I do not see any connection in the proceedings herein before the Tribunal to plot number KJD/KISAJU/1173. Though this plot was referred to by the applicant, it was also not part of the Tribunal's decision. It was also not explained by the applicant how the said plot, which according to the title was merely 2.023 hectares came into this dispute. The other plots mentioned in the Tribunal's decision appear to be much bigger. Plot No. KJD/KISAJU/1172 is itself said to be 9 acres in size.

Having said so, and having found that the Tribunal did not have jurisdiction to make the orders it made, and since the ex-parte applicant herein SOLOMON NGURE was the claimant before the Tribunal in the Tribunal's decision being challenged. I will allow the Notice of Motion. I therefore, issue an order of certiorari to remove into this court for purposes of being quashed the decision/award of Kajiado District Land Disputes Tribunal Claim No. TC311/02/06 conferring ownership/title of land namely KJD/KISAJU/1172 in favour of the applicant on or about 2nd September, 2006, and same is hereby quashed by this court.

It is so ordered.

Dated and delivered at Nairobi this 23rd day of July, 2008.

GEORGE DULU

JUDGE.

In the presence of-

Mr. Ojiambo holding brief for Mr. Njenga for applicant.