



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

Civil Misc. Appli. 301 of 2007

REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN ATHI-RIVER L.D.T..... RESPONDENT

PATRICIA MUMBUA NGULU

MOSA NGILA

MBURU MWATHI INTERESTED PARTIES

TRUPKI LIMITED EX-PARTE

RULING

1. The Notice of Motion dated 18/1/2008 seeks orders under Order LIII Rule 3 (1) of the Civil Procedure Rules that;

i. **“THAT** the Honourable Court be pleased to issue an order of certiorari to have the award in Athi River Land Disputes Tribunal in Claim No. 86 B of 2006 read in open Court on 26th July, 2007 vide Chief Magistrates Court Misc. Application No. 78 of 2007 removed into this Court and quashed.

ii. **THAT** the cost of this Application be provided for.”

2. From the Statement of Facts relied upon, the grounds in support are that:

a. **“The Applicant is the registered owner of all that piece of land situate in Mavoko Township in Machakos District containing by measurement One Decimal Seven Eight Two (1.782) hectares, LR. No. 337/1632.**

b. **PATRICIA MUMBUA NGULU, MOSA NGILA and MBURU MWATHI and others are**

squatters on the Applicants parcel of land and moved to court vide the Athi River Land Disputes Tribunal in Claim No. 86 B of 2006 claiming ownership of the said parcel of land through adverse possession and whose tribunal decision was ratified by the Chief Magistrate Machakos vide Misc. Application No. 78 of 2007 on 26th July, 2007.

c. The Athi River Land Disputes Tribunal and the Chief Magistrate Machakos were misled by the said PATRICIA MUMBUA NGULU, MOSA NGILA and MBURU MWATHI by non-disclosure of fundamental material facts and on basic principles of law.

d. The Athi River Land Disputes Tribunal and consequently the Chief Magistrates Court lacked jurisdiction and acted beyond their authority in that matter and therefore “*ultra vires*” the law.

e. The Applicant has no other recourse but to come before the Constitutional and Judicial Review Division of the High Court of Kenya since:

(1). The Chief Land Registrar Nairobi has been directed and is in the process of amending and/or rectifying the Applicants property being L.R. No.337/1632 Mavoko Municipality in the Machakos District and transferring 1.6 acres to one PATRICIA MUMBUA NGULU as per the court decree and/or decree.

(2). Further to No. 1 “*supra*”, that the said PATRICIA MUMBUA NGULU do give 1/8 of an acre to MOSA NGILA and MBURU MWATHI of which they will share equally.

(3). Official searches and documents of title clearly and explicitly depict that the said parcel of land being L.R. No. 337/1632 does belong to the Applicant.

(4). The said PATRICIA MUMBUA NGULU, MOSA NGILA and MBURU MWATHI and others are squatters who intend to circumvent the due process of the law and acquire the Applicant’s property illegally and/or unconstitutionally but this Honourable Court is bound by law to uphold the sanctity of the Constitution of the Republic of Kenya which guarantees the protection of private property.”

3. Although I have seen a Notice of Appointment on record by M/S B.M. Mung’atta & Co. Advocates on behalf of the 3rd Interested Party and by M/S A.M. Mbindyo & Co. Advocates on behalf of the 1st Interested Party there is actually no reply to the Application by either the Respondent or the Interested Parties. On 24/7/2008 when the same came for hearing and I declined to grant an application for adjournment by Mr Makau, advocate, there were no submissions made on behalf of those parties. Without any response, I presume that the Application is undefended but is the ex-parte Applicant deserving of the orders for judicial review?

4. I have seen the decision under challenge and of importance is the following statement;

“Having heard and considered the representation of all parties (and their witnesses) and having considered all documents submitted to us, we hereby decide as follows:

That the chief land registrar Nairobi is here ordered and directed to amend and or rectify all land No.337/1632 and transfer the same 1.6 acres to Patricia Mumbua Ngulu ID No.12592217 after which she will give 1/8 of an acre to Mosa Ngila and Mburu Mwathi of which they will share equally and pay the cost of the claimant.”

5. That decision must be read against the mandate of the Tribunal as is set out in Section 3 (1) of the Land Disputes Tribunals Act No. 18 of 1990 which provides as follows:-

“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; or

(c) trespass to land,

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

6. It is quite clear that the mandate of the Tribunal was exceeded when it purposed to order amendment and rectification of the register regarding title number 337/162 and to purport to determine who is entitled to ownership of part of it. Once there is no jurisdiction, whatever the merits or demerits of a decision, the same is of no consequence as it amounts to nothing. In **Re M.V. Lillian 5 (1989) KLR 1** the court cited with approval the explanation of what jurisdiction is in **Words and Phrases Legally Defined Vol. 3 para I N at page 113** as follows:

“By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court/tribunal must inquire into the existence of the facts in order to decide whether court has jurisdiction; but except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before a judgment is given.”

7. I need say no more because the words above aptly address the situation before me. I note also that in fact a decree was extracted in **CM Misc. Appl. 78/2007 (Machakos)** with a view to execution of the decision of the Tribunal. Both actions were a nullity and prayer 1 of the Notice of Motion dated 18/1/2008 is granted.

8. As to costs, since the Motion was not opposed, I will make no order as to costs.

9. Orders accordingly.

Dated and delivered at Machakos this 14th day of **October** 2008.

ISAAC LENAOLA

JUDGE

In presence of: Mr Makau h/b for Mr Abuga for ex-parte Applicant

Mr Kimeu h/b for Mr Mung’ata for 3rd Interested Party.

ISAAC LENAOLA

JUDGE