

Disputes Tribunal to file a claim lodged by the Applicant was for stay of selling of land and subdivision of land but was not claim for ownership of land and/or rectification of register by deleting the name of a deceased person from the register in respect of land being first registration under Registered Land Act nor was there a counter claim and even if there was an issue it was not one of the issues for which the Land Dispute Tribunal has jurisdiction to deal with under section 3(1) of the Disputes Tribunals Act.

ii. That the Chairman Makueni Land disputes Tribunal had no capacity to deal with the claim not lodged with the Tribunal and more so when the nature of dispute was not over claims for which tribunal has jurisdiction as the claim was based on ownership of land and/or Registration through fraud or mistake or breach of Trust of rectification of register and also over an estate of deceased person one Maluta Kinyanzwii yet the Tribunal went beyond its jurisdiction by registering the claim and proceeding to hear the same and ordered the name of the applicant late father, Maluta Kinyanzwii to be deleted from the register when the estate was not represented by any legal representative and when letters of administration had not been obtained by any party in the dispute.

iii. That the Chairman Makueni Land Disputes Tribunal had no jurisdiction to entertain the proceedings in respect of this claim as it was not solely a claim for division of land or determination of boundaries or claim to occupy or work on land but a claim over state of a deceased person.

iv. That the proceedings before Chairman Makueni Land Disputes Tribunal is a nullity and an abuse of the court process as it proposes to have the register rectified and in dealing with a succession cause.

v. That the Chairman Makueni Land Disputes Tribunal exceeded its Jurisdiction by ordering deregistration of a deceased registered proprietor contrary to the provisions of the Land Disputes Tribunal Act and the said decision is ultravires the relevant provisions of law and the law of Succession Act.

vi. The Chairman Makueni Land Disputes Tribunal exceeded his jurisdiction by entertaining the claim, which was contrary to section 3 of the land Disputes Act.”

3. The specific decision by the Tribunal and which is under challenge was dated 30.6.2006 and the same is worded thus :-

“After viewing the written points we decide that Kisau/Kako/ 292 and Kisau/Kako/354 and Matata Ndetei’s small portion all belonged to Kisuvu Kavai. The Tribunal members request the court to delete the name Maluta Kinyanzii from Kisuvu’s Title deed Kisau/Kako No. 292.

The final decision of the land dispute tribunal members is this. The land belongs to Kisubu Kavata and she is the person who sold some parts of her land to objectors Paul Ngunda and Matata Ndetei.

The claimant’s land is Kisau/Kako No. 5.”

4. It has been argued that the above decision was made in excess of the Tribunal’s mandate as set out in section 3(1) of the Land Disputes Tribunal Act No. 18/1990 which provides as follows:-

“Subject to this Act, all cases of a civil nature involving a dispute as to –

- a. the division of, or the de termination of boundaries to land, including land held in common;*
- b. a claim to occupy or work land, or*
- c. trespass to land.”*

5. Without belabouring the point and since it was basically conceded to by the advocate for the Interested Party, the Tribunal had no mandate to determine who was entitled to ownership and to

“request” the court to “delete” certain names from the register. Jurisdiction is “*everything*” according to *Nyarangi, J.A.* in M.V. Lillian 5 [1989]KLR I and without that jurisdiction, the decision amounts to nothing even if in fact it otherwise has merit. That being the case, prayer 1 of the Motion has merit and it must be granted.

6. Regarding costs, it was forcefully argued on behalf of the Interested Parties that no costs should be paid by them because the Tribunal fell into its own errors and they are not to be punished for it. I agree. It was the ex-parte Applicant who filed a complaint before the tribunal. He has now properly raised the issue of jurisdiction. The Interested Parties agree and I do not see why they should suffer costs. Let each party bear their own costs.

7. Orders accordingly.

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

Isaac Lenaola

Judge

In the presence of: Mr Makau Jnr for Applicant

Mr. Mulyungi h/b Mr.Masika for Interested Party

Isaac Lenaola

Judge