



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS

Civil Misc. Appli. 160 of 2006

MUNYAO MUTIE MAKAU..... 1ST APPLICANT

PETER MAKAU MUTIE2ND APPLICANT

VERSUS

1. THE CHAIRMAN MACHAKOS DISTRICT LAND DISPUTES TRIBUNAL

2. THE CHIEF MAGISTRATE, MACHAKOS LAW
COURT.RESPONDENTS

MUSYOKA MUTIE MAKAUINTERESTED PARTY

RULING

1. The Notice of Motion dated 16/10/2006 is premised on Order LIII Rule 3 of the Civil Procedure Rules and seeks the following orders:-

a. “That an order of certiorari do issue to remove into this court for purposes of quashing the award of the MACHAKOS DISTRICT LAND DISPUTES TRIBUNAL dated 12/6/2006 in Tribunal Case Number 124 of 2002 and read to the parties in court on 18/7/2006 and adopted as a judgment of the court on the same date in MACHAKOS CHIEF MAGISTRATES MISC. APPLICATION NUMBER 84 OF 2006.

b. THAT the leave granted herein do operate as a stay against the implementation/enforcement of the said award of the MACHAKOS DISTRICT LAND DISPUTES TRIBUNAL CASE NUMBER 124 OF 2004 which has been adopted as a judgment of the court on 18/7/06 in MACHAKOS CHIEF MAGISTRATES MISC. APPLICATION NUMBER 84 OF 2006 pending the hearing and determination of this application or further orders from this Honourable court.

c. THAT the costs of the application be borne by the interested party.”

2. Prayer (b) is of court superfluous at this stage and is quickly struck out.

3. In any event, I have read the Statement of Facts and the Verifying Affidavit sworn on 20/9/2006 together with another Affidavit sworn on the same day together with its annexures. Of significance is the decision being challenged i.e. LDT Case No.124/2002. The members’ award was as follows:-

“According to the evidence adduced before the court it was proved that the late Tabitha Mumbua

Mutie was the right owner of the shares of Katheka Kai Co-operative Society member No.10.

Therefore any benefits from Katheka Kai Co-operative Society belong to Tabitha Mumbua Mutie.”

4. In the proceedings of the Tribunal, what was clearly in issue was the 40 shares within Katheka Kai Co-operative Society Ltd. On one hand, Musyoka Mutie, the Interested Party claimed those shares on behalf of his deceased mother, Tabitha Mumbua Mutie while the ex-parte Applicants claimed them on behalf of their deceased father, Mutie Makau. The Tribunal prior to the award concluded as follows:-

“3. FINDINGS/DISCUSSION AND REASONS

a. MEMBERSHIP

According to records availed by Musyoka Mutie Makau Mumbua Mutie is the registered member of Katheka Kai Co-operative Society Ltd.

NO.10 (EXHBIT NO.MMM.III)

Unlike statements by Munyao Mutie Makau and Peter Mutie Makau that their father the late Mutie Makau was the sole registered owner.

b. Shares.

Records from Katheka Kai Co-operative Society Ltd, show that Mumbua Mutie member No.10 is the registered proprietor of 40 shares (forty shares) issued on 15/2/99 (EXHIBIT MMM IV).

c. According to the Katheka Kai Co-operative Society by law those who could not work on the plantations were refunded their shares.

d. That Tabitha Mumbua Mutie was an employee at the Society and a contributor to the NSSF. (EXHIBIT MMMV).”

5. In his Replying Affidavit, Musyoka Mutie Makau admits at paragraph 3 thereof that whatever was in issue was **“property held by Katheka-Kai Society that has perpetual succession and upon demise of a shareholder thereof, the shares automatically are transferred to the beneficiary.”** Further, that at paragraph 9 thereof he states thus;

“That the issue before the Tribunal was not about the shares of Mutie Makau but of Tabitha Makau.”

6. From submissions by the advocates for the parties and from my understanding of Section 3 (1) of the Land Disputes Tribunals Act No.18 of 1990, it is clear that the ex-parte Applicants are right in their argument that the Tribunal exceeded its mandate. That section 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.”**

7. In the present case, it is clear that none of the issues envisaged by the Act were before the Tribunal. In fact, to my mind the issue of shares in a Cooperative Society, even if eventually they have a bearing to land, can only be resolved through mechanisms known to the Co-operative Societies Act No. 12 of 1997 and specifically Section 76 thereof. It must be noted that the mandate of Land Disputes Tribunals does

not extend to every dispute that laymen place before it. This case is a case classicus of a Tribunal gone overboard.

8. Whatever the merits of the decision handed down by the Tribunal once I have found that it had no jurisdiction, nothing more can be said.

9. The Application before me is with merit and prayer 1 thereof is allowed as prayed. As regards costs, it was the Interested Party that initiated the unlawful proceedings and he will pay the costs of the motion before me.

10. Orders accordingly.

Dated and delivered at Machakos this **13th** day of **November** 2008.

ISAAC LENAOLA

JUDGE

In presence of: **Mr Sila for Applicant**

Mr Musyoka for Interested Parties

ISAAC LENAOLA

JUDGE