



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT KERICHO

Misc Civil Appli 66 of 2008 (JR)

- . Land & Environmental Law
2. Lands Disputes Tribunal Act (No. 18/1990)
3. Judicial Review Application
 - i. Certiorari – to quash the decision of Chilchila Lands Disputes Tribunal award 8th January, 2007
 - ii. LR Kericho/Kunyak/376
 - iii. Leave to file Judicial Review proceedings (17th July, 2007) Wendoh J
4. Application
 - iv. Notice of Motion filed 7.8.07.
- v. Land Parcel originally owned by one Sarah Cherugut Langat.
 - vi. She takes loan with Agricultural Finance Corporation of Ksh. 25,000/- with others
 - vii. Fails to repay back loan.
 - viii. Agricultural Finance Corporation gives property to one Stanley Tanui on condition he repays back loan and works the land.
 - ix. Original owner Sarah Cherugut Langat sells land to ex parte applicant – Naftali Mochache Nyamosi
 - x. Ex parte applicant files case with Lands Disputes Tribunal.
 - xi. Held that there is no trespass
5. Judicial Review applicant filed to quash decision.

Grounds

- I. The Tribunal had no powers to decline to say the respondent was not a trespasser
- ii. Decision be quashed
6. Respondent – absent
7. Held – The tribunal had no powers to determine issue of ownership.
8. Case

a) **Zedekiah M. Mwale v Bikeke Farmers Director & Anor.**

Kitale HCCA No. 25 OF 1998

b) **Republic v Ag. Principal Magistrate Molo & 2 others**

Kericho HC MISC. APP. 98/06

9. Advocates

E.M. Orina advocate instructed by M/S E.M. Orina & Co. advocates for the Exparte applicant

No appearance for the 1st, 2nd & 3rd Respondents

NAFTALI NYAMAMOSI MORACHA APPLICANT

VERSUS

CHAIRMAN CHILCHILA LAND DISPUTE

TRIBUNAL & 2 OTHERSRESPONDENT

RULING

I: Background

1. The exparte applicant, Naftali Nyamamosi Moracha was granted leave on 17th July, 2007 (*Wendoh J*) to file Judicial Review proceedings for prayers of certiorari against the decision of Chilchila Lands disputes tribunal award on 8th January, 2007.
2. This award touched on land parcel LR Kericho/Kunyak/376 a settlement scheme. Briefly, the said parcel of land was originally owned by one Sarah Cherugut Langat. She took out a loan with the Agricultural Finance Corporation of Ksh. 25,000/= with others not before Court. She failed to repay this loan and the Agricultural Finance Corporation permitted the said third party known as Stanley Tanui to work the land on condition he services the loan and repays the same.
3. In 1988, the said original owner Sarah Cherugut Langat sold the whole parcel of land to the exparte applicant whilst she still had a loan to the exparte applicant Naftali Mochache Nyausia
4. The third party Stanley Tanui entered upon the land in 1992 and failed to leave.

5. The ex parte applicant filed in the Lands Disputes Tribunal a case in which he prays that the said third party be evicted from the suit land that he invaded in the year 2000 when he is alleged to have paid the Agricultural Finance Corporation loan.
6. The tribunal made a decision after hearing both parties that the third party Stanley Tanui had authority to work the land and a right to be on the land as it was he who paid for loan.
7. That the ex parte applicant should ask Sarah Cherugut Langat (*the original owner*) and Agricultural Finance Corporation management why this was so.
8. Being dissatisfied with the decision, the ex parte applicant applied for a Judicial Review to quash the decision of the said tribunal.
9. The respondents failed to appear to Court during the hearing of the Notice of Motion.

II: Opinion

10. The decision of the tribunal was based on the issue of trespass. Under the **Lands Disputes Tribunal Act 1990 Section 3(1)** the tribunal has jurisdiction to determine

“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,.....”

11. The tribunal in this case held that the third party had a _____ right to be upon the land. They declined to declare him a trespasser. The effect of this decision in directly meant that the third party was in effect the owner of the said property.

12. Thus, the arguments held by the ex parte applicant is that the tribunal had no powers to determine the issue of ownership and ought to have declared the respondent third party a trespasser. They did not do so.

13. The land in question is one that falls under the settlement scheme. Where dispute arises, the officer in charge of the settlement scheme would normally handle such issues.

14. The decision of the tribunal was one of trespass. They determined that the respondent third party was entitled to be on the said parcel of land in his capacity as having paid a loan on the said land, to the Agricultural Finance Corporation (AFC). This cooperation is to show that a loan was issued by them and that they now wish to recover the same. That ownership passed from the original owner to the respondent third party.

15. To my mind the question of ownership does arise. Who out of the two owns the said piece of property. The tribunal held it was the respondent and as such he was not a trespasser yet the ex parte applicant claims to hold title to the said piece of land.

16. I am of the opinion that the decision by the tribunal cannot stand. It is hereby brought to this court through the suit of certiorari and accordingly quashed on grounds that the tribunal had exceeded its powers.

17. The respondent failed to attend Court. I award costs of this Judicial Review Proceedings to the ex parte applicant.

DATED this 4th day of November, 2008 at **Kericho**

M.A. ANGA'AWA

JUDGE

Advocates

E.M. Orina advocate instructed by M/S E.M. Orina & Co. advocates for the Exparte applicant

No appearance for the 1st, 2nd & 3rd Respondents