



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC CIV APPLI 705 OF 2005

REPUBLIC APPLICANT

-VERSUS-

- 1. MSAMBWENI LAND DISPUTE TRIBUNAL**
- 2. RESIDENT MAGISTRATE – KWALE**
- 3. LAND REGISTRAR – KWALERESPONDENTS**

AND

- 1. MOHAMED KASSIM KIDATO**
- 2. OMARI KASIM KIDATOINTERESTED PARTIES**

EX-PARTE: FRANCA ALIERI SOGNO

RULING

This is a Judicial Review application seeking an order of Certiorari to remove into this court and quash the decision of Msambweni Land Disputes Tribunal given on 20th June 2006 in Land Dispute No. 64 of 2006. The application also seeks two orders of Prohibition but Mr. Okongo, counsel for the ex- parte applicant did not pursue them.

The application is based on the grounds that the decision was made without jurisdiction, against the rules of natural justice and that it was a nullity as it was made against a deceased person and on a matter that was *res judicata*. The other ground is that the interested party's interest, if any, in the suit piece of land was time barred.

Though served upon the respondents neither of them bothered to oppose the application. Miss. Langat for the interested party wisely conceded the application.

I do not know if anyone has taken the trouble to advise the Land Disputes Tribunals on the extent of their jurisdiction. I say this because of the numerous applications that come before us from their decisions. Those tribunals seem to think that they have all the powers in the world to deal anything and everything that is taken to them. For their benefit I direct that this ruling be served upon Msambweni Land Disputes Tribunal. The Land Disputes Tribunals should know that being creatures of statute they can only do what the statute that is Land Disputes Tribunals Act No. 180 of 1990, authorizes them to do and that is to deal with:-

“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.”**

They have no powers to deal with matters of Title to land. They have no powers to revoke any Title and have one issued to somebody else as they purported to do in this case. They have also no powers to revisit disputes that have been determined. In this case the same Msambweni Land Disputes Tribunal Land in 1998 “**awarded**” the suit piece of Land to the interested party. Their award was quashed by the High Court in HC.MISC. C. Application No. 181 of 1999 on the same ground that they had no powers to deal with matters of title. That notwithstanding several years down the line they entertained the same frivolous complaint from the interested party.

The Land Disputes Tribunals should also know that they have no powers or jurisdiction to entertain claims that are time barred. Section 13 (3) of the Land Disputes Tribunals Act forbids them from entertaining:-

“... proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court.”

In this case the ex parte applicant’s husband was issued with a Title Deed in 1979. Under the Limitation of Actions Act claims for any interest in land must be made before the expiration of 12 years. The interested party’s claim made to Msambweni Land Disputes Tribunal last year was therefore time barred and should not have been entertained.

I have also noted in several cases including this one that the Land Disputes Tribunals do not give any or any adequate notice to the people against whom claims are made. They should know that that is an abuse of their authority and their decisions will always be overturned.

For this reasons I allow this application with costs to the ex parte applicant to be paid by the interested parties – Messrs Mohamed Kassim Kidato and Omari Kassim Kidato.

DATED and delivered this 28th day of February 2007.

D.K. MARAGA

JUDGE

28.2.2007

Before Maraga Judge

Okongo for Applicant

Non appearance for Respondent

Court clerk – Mitoto

Court – Ruling delivered in open court.

D.K. MARAGA

JUDGE