



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MOMBASA

Misc. Civ. Appli. 641 of 2005

REPUBLICAPPLICANT

VERSUS

- 1. THE BAHARI LAND DISPUTES TRIBUNAL**
- 2. THE SENIOR RESIDENT MAGISTRATE, KILIFI**
- 3. THE LAND REGISTRAR, KILIFI.....RESPONDENTS**

AND

- 1. KARISA BAYA**
- 2. KAZUNGU BAYA**
- 3. YAA BAYA.....INTERESTED PARTIES**

EX PARTE: STANLEY KALUME WANJE

RULING

The exparte applicant herein, Stanley Kalume Wanje, took out the motion dated 15th September 2005 in which he sought for the following orders:

- (i) *An order of certiorari to have the decision of Bahari Land Disputes Tribunal expressed in Land case no. 8 of 2004 between Kazungu Baya and Karisa Baya =vs= Yaa Baya quashed.*
- (ii) *An order of certiorari to also have the decree given by the Senior Resident Magistrate, Kilifi on 23rd June 2005 in Land case No. 4 of 2005 between Kazungu Baya and Karisa Baya =vs= Yaa Baya.*
- (iii) *An order of prohibition, prohibiting the Land Registrar Kilifi from subdividing all those parcels*

or pieces of land known as Majaoni block 5A/358 and Majaoni Block 5A/359 or transferring the same or part thereof to Kazungu Baya, Karisa Baya and or Yaa Baya.

The applicant filed an affidavit in support of the motion. The interested parties herein, namely Karisa Baya, Kazungu Baya and Yaa Baya filed grounds of opposition to challenge the motion.

To begin with, it is the averment of the applicant that he is the registered proprietor of Majaoni Block 5A/358 and Majaoni Block 5A/359. He attached to his affidavit copies of the title deeds and the official searches. These factual averments have not been controverted by way of an affidavit. In the absence of any contrary evidence, I am inclined to accept those facts. The aforesaid annexures indicated that the applicant was registered as the owner of the aforesaid parcels of land in the year 2000. It is the submission of the applicant that the tribunal should have heard him before making its decision affecting his title.

The applicant also complained that the tribunal had no jurisdiction to hear and determine a dispute over ownership of land.

Interested parties' advocate raised legal technical issues to counter the applicant's motion. It is the submission of Mr. Ng'eno, learned advocate for the interested parties that the applicant has no *locus standi* to file these proceedings because he was not a party to the case before the Land Disputes Tribunal. It is also argued that the applicant should have filed an appeal to seek for the available remedies instead of these proceedings. It has further been argued by Mr. Ng'eno that the motion was filed out of the 21 days given at the leave stage without leave of court extending time.

I will begin by dealing with the preliminary issues raised. The last issue raised relates to whether or not the motion was filed out of time. This court gave the applicant 21 days within which to lodge the substantive application as from 26th August 2006. The motion was filed on 15th September 2006. On computing time it is clear that the motion was filed within 20 days from the date of leave. In essence the preliminary objection fails.

The second issue raised is to the effect that the applicant had an alternative remedy to appeal hence he should not have filed these proceedings. It is trite law that the fact that a party has an alternative remedy is no bar to such a party seeking for judicial review orders. In view of that this objection has no merit.

The other preliminary point raised by the respondent can be disposed of together with one of the grounds raised by the applicant. It is the argument of the interested parties that the applicant has no *locus standi* in that he was not party to the case before the Land Disputes Tribunal and the Senior Resident Magistrate's Court. That view cannot be correct because the decision affected the proprietary rights of the applicant as a registered owner of the aforementioned suit premises. It was therefore necessary for the Land Disputes Tribunal to hear the registered owner of the land before making adverse orders. Such an issue was considered by the court of Appeal in the case between **James Ndungu Wa Wambu and The Land Registrar Kajiado District & 8 others C.a. No. 85 of 1992** in which the court of Appeal state as follows:

“The registered owners were, therefore in our view persons directly affected and ought to have been given a hearing and natural justice demanded that they be informed of the allegations made against them or the reasons why it was proposed to cancel their title deeds.”

In this case the Tribunal acted in breach of the rules of natural justice. Such a decision is amenable by judicial review.

The other issue raised is that the tribunal acted and determined matters touching on title to land. It is clear that the tribunal awarded 9 acres comprised in plot No. Majaoni Block 5A/358 to Kazungu Baya and Karisa Baya. It also awarded 4 acres comprised in Majaoni Block 5A/359 to Yaa Baya. In other words the tribunal determined issues touching on ownership to land. That was obviously beyond jurisdiction prescribed under section 3 (1) of the Land Disputes Tribunals Act. The applicant's titles were

unlawfully interfered with by bodies which lacked jurisdiction thus their orders are null and void.

The final result in this matter is that I find the motion well founded, it is allowed as prayed for with costs to the applicant.

Dated and delivered at Mombasa this 13th day of February 2007.

J.K. SERGON

J U D G E

In open court in the presence of Mr. Omollo for the ex parte applicant and Miss Jadeed hold brief for Mr. Ng'eno for the 1st Interested party.