



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

MISC CIV APPLI 95 OF 2006

IN THE MATTER OF: AN APPLICATION BY JULIUS KIRIMA M’NDEWA FOR ORDERS OF CERTIORARI AND IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF: MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL ABOGETA LAND DISPUTES TRIBUNAL AND IN THE MATTER OF L.D.T NO. 82 OF 2005.

REPUBLIC.....APPLICANT

V E R S U S

MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL...1ST RESPONDENT

ABOGETA LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

SILAS MURIUNGI M’NDEWA.....INTERESTED PARTY

MARY NCHURUBI M’NDEWA.....INTERESTED PARTY

EX-PARTE

JULIUS KIRIMA M’NDEWA

JUDGMENT

1. The ex-parte Applicant, Julius Kirima M’Ndewa by his Notice of Motion brought under Order LIII rule 3 of the Civil Procedure Rules prays for orders as follows:

1) That an order of Certiorari be issued to remove to this court the undated decision of the MERU CENTRAL DISTRICT/ABOGETA LAND DISPUTES TRIBUNAL in their L.D.T CASE No. 82 OF 2005 read to the Applicant and the other parties on 25th May 2006 and quash the same and other orders made therein without jurisdiction and against the law of the Land.

2) That the costs of this Application be provided for.

2. In the Statement of Facts, the Verifying Affidavit and annexures to it the ex parte Application gives the history of the dispute as follows;

That he is the registered proprietor of land parcel number Abogeta/Upper-Chure/180 and the title thereto is exhibited to the Verifying Affidavit. It is not in dispute from the evidence set out that he acquired the land by transmission and pursuant to Succession Cause No. 1 of 1970 at the Nkubu District Magistrate's Court. He adds that sometime in 1995, the Interested Parties, Silas Muriungi M'Marete N'dewa and Mary Ncurubi instituted Nkubu RMCC No. 41 of 1995 and I note from the Plaintiff in that suit that they were challenging the distribution of land in Succ. Cause No. 1 of 1970 aforesaid and they were basing their claim on the decision of clan elders at a meeting on 25.3.1995. The Defendant in that suit is the present ex-parte Applicant and on 9.8.1995, the suit was dismissed because it was time-barred and the court lacked jurisdiction to entertain it.

3. The present 1st Interested Party then instituted HCCC 984/1995 (Meru) against the ex-parte Applicant and in that suit he was seeking 4 acres out of land Parcel Number Abogeta/Upper-Chure/180. It would seem that the suit is still pending before this court and before it was determined, the 1st Interested Party filed a complaint before the Meru Central Land Disputes Tribunal and at the conclusion of the hearing, the Tribunal awarded the 1st Interested Party 4 acres out of the Applicant's parcel of land and 2 acres to the 2nd Interested Party. That decision is the subject of these proceedings and it is argued on behalf of the Applicant that the Tribunal;

(i) exceeded its mandate under s. 3(1) of the Land Dispute Tribunal Act by delving into and determining issues of title and ownership to land and

(ii) Determining matters that were barred by the doctrine of res judicata and also by the statute of limitations.

(iii) Forwarding to the subordinate court, a report that was undated contrary to s. 3(8) of the Land Disputes Tribunals Act.

4. The answer to these matters by the Interested Parties (the Respondents refused to appear although properly served) is contained in a brief Replying Affidavit by the 1st Interested Party filed for both of them and is simple; that the Applicant ought to have filed an Appeal to the Provincial Appeals Committee under S. 8 of the Land Disputes Tribunals Act.

5. I have read the elaborate motion and its supporting documents and I agree that the orders of certiorari should issue for the following reasons;

6. Firstly, there is no serious answer to the serious issues raised and even if there was, my view is this;

7. That secondly, s. 3(1) of the Land Disputes Tribunals Act provides as follows:-

“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”.

8. Looking at the dispute placed before the Tribunal and more clearly the final decision made, the issue was one of entitlement to and ownership of land by the Interested Parties against a registered owner of land. Once that became an issue, then the Tribunal exceeded its mandate and as has

been said for the umpteenth time by this court, then the order of certiorari properly lies to quash that excess of jurisdiction. This is true of the case before me.

9. Thirdly, s.13(3) of the Land Disputes Act provides as follows:

“For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain 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”.

10. It has not been denied that the same parties litigated over the same parcel of land in Nkubu RMCC No. 41 of 1995. That suit was struck off because it was statute time-barred. So far as I can see, no Appeal was ever preferred against that decision even if it was made in error, and I don't think that it was. Without that decision being overturned by an Appellate court it remains a binding decision on the parties as regards the suit land. It similarly binds the Tribunal by dint of s.13 (3) aforesaid and the Tribunal could not ignore it and proceed to issue orders contrary to that decision.

11. Further. S.13(1) of the Land Disputes Tribunals Act provides as follows;-

“Where any proceedings to which section 3(1) of this Act Applies have at the commencement of this Act, been filed in a magistrates court, then unless the court has at that time heard and pronounced judgment thereon, the proceedings shall be discontinued until the dispute has been referred to the Tribunal and determined in accordance with this Act.”

12. I do not understand that sub-section to bar proceedings before the High Court once a reference or complaint is made in a Land Disputes Tribunals. I say so because the 1st Interested Party at his own instance instituted HCCC 984/1995 and in that suit he was seeking 4 acres out of the disputed land, the same claim he subsequently made before the Tribunal. The Tribunal should not have seized itself of the dispute before determining the fate of the High Court suit. The risk and I say this with tremendous respect is that once Tribunals ignore the dictates of good judicial order, then the administration of justice would inevitably be brought to great disrepute and embarrassment.

13. Lastly, it is not the intention of courts to close the doors of justice to deserving litigants but when they approach those doors they must do so using known and proper legal channels. I am certain that the Interested parties benefited from an illegal, null and void decision of the Tribunal and they must be told so.

14. I have said enough to now conclude by saying that the orders of certiorari as sought in prayer 1 of the Application are hereby granted.

15. Costs shall be paid to the Applicant by the interested parties only.

Dated, signed and delivered in open court at Meru this 7th day of February 2007

ISAAC LENAOLA

JUDGE

In the presence of

Mr. Rimita Advocate for the Applicant

Interested Parties in persons Advocate for the Respondent

ISAAC LENAOLA

JUDGE