



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Miscellaneous Civil Application 115 of 2006

JOSPHAT MBUTHIA MUNENEAPPLICANT

VERSUS

MUTHONI KARIUKI MUNENE.....RESPONDENT

RULING

It has been said that before embarking on the hearing of any matter, every court and indeed any tribunal established pursuant to any legislation must be satisfied that it has jurisdiction i.e. the legal power or authority to hear and determine a matter. If the court or tribunal has that power, then and only then does it proceed to hear the dispute; but if the court or tribunal determines that it has no jurisdiction then as was said in the case of “The owners of the motor vessel ‘Lilians’ V Caltex Oil (Kenya) Ltd (1989) KLR 1 *the court must down tools...*”

The matter before me was originally dealt with by the Othaya Land Disputes Tribunal which rendered its award over land parcel number Chinga/Kagongo/231. The tribunal’s award was in terms that:

“....We therefore award this land to be shared as follows:-

Josphat Mbuthia Munene - 2.7 acres

Muthoni Kariuki Munene - 1 acre

The claimant land to cover where her late husband grave is.....”

Josphat Mbuthia Munene, hereinafter referred to as “*the applicant*” was obviously not amused by the decision of the tribunal. Accordingly on 12th June, 2006 he moved to this court and obtained leave to commence judicial review proceedings in the nature of certiorari and prohibition to quash the award of the tribunal aforesaid and also prohibit the Nyeri Chief Magistrate’s Court or any other subordinate court from entering judgment in terms of the said award in respect of LR. No.Chinga/Kagongo/231 hereinafter referred to as “*the suit premises*”.

Upon obtaining leave as aforesaid, the applicant on 22nd June, 2006 filed the substantive notice of motion in terms of order LIII rule 3 of the Civil Procedure Rules seeking the same orders of certiorari and prohibition. The application was anchored on the grounds that the issues in dispute before the tribunal related to title to land and trust and under *section 3* of the Land Disputes Tribunals Act, the tribunal had no jurisdiction to determine the same. That the proceedings before the tribunal and the resultant award

were therefore null and void abinitio for want of jurisdiction. That since the award is a nullity, there is nothing to be entered as judgment of the court. The verifying affidavit sworn by the applicant in support of the application was in the same vein as the grounds aforesaid.

On being served, Muthoni Kariuki Munene, hereinafter referred to as “*the respondent*” reacted by filing a replying affidavit. Her bone of contention was that the applicant acceded to the jurisdiction of the tribunal by participating in the deliberations that culminated in the award. At that time the applicant did not raise any objection as to lack of jurisdiction by the tribunal to determine the matter. Thus the applicant was estopped from raising the issue now. She otherwise admitted that her claim to a portion of the suit premises before the tribunal was based on the concept of family trust in that the suit premises were initially owned by Munene Mathenge the respondent’s father in law and father to the applicant. It was the contention of the respondent that Munene Mathenge aforesaid, now deceased requested the applicant to have registered in his name the suit premises in trust for the respondent’s husband who was then in detention during land consolidation and demarcation. That the applicant in breach of the trust aforesaid in 1975 applied for a certificate of title which was then issued to him on the 13th October, 1975 hence her claim before the tribunal.

Section 3 (1) of the Land Disputes Tribunal Act sets out the mandate of the tribunals set up pursuant to the relevant provisions of the said Act. It provides that:

“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”

Nowhere in the above mandate is a tribunal authorized to hear claims based on family trust or title to land. The tribunal therefore acted without jurisdiction by dishing out an acre of the suit premises to the respondent blatantly ignoring the fact that the applicant is the registered owner of the suit premises. Pursuant to *sections 27 and 28* of the Registered Land Act, once a person is registered as the proprietor of piece of land, that registration vests in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto. Those rights are not liable to be defeated except as provided for in the same Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever. However a trust is one of the interest recognized by the act that may very well defeat the interest conferred by such registration and or the rights of the proprietor as aforesaid. However it is not within the jurisdiction of the land disputes tribunals to ventilate causes of action based on family trust. Those causes of action are best left to be ventilated elsewhere and in particular our civil courts. The Land Disputes Tribunals are certainly not among those civil courts.

In ordering the subdivision of the suit premises, the tribunal dealt with matters relating to title to land which jurisdiction it does not have. Such jurisdiction under *section 159* of the Registered Land Act is again vested in our civil courts. These are the only courts authorized by law to hear proceedings relating to the title to or the possession of, land, or to title to a lease or charge registered under the Act. These disputes can either be heard by the High Court or the Resident Magistrate’s Court depending on the pecuniary value of the land. That provision of the law clearly and expressly ousts the jurisdiction of the land disputes tribunal in hearing and entertaining claims pertaining to title to land.

Jurisdiction is jurisdiction and is everything. I have said so at the very commencement of this ruling. Jurisdiction is expressly conferred and cannot be inferred. It matters not that in the circumstances of this case, the applicant submitted himself to the jurisdiction of the land disputes tribunal. Jurisdiction cannot be conferred by consent of parties where there is none. Jurisdiction cannot be conferred merely because a

party acquiesces to some proceedings. Estoppel as a principal of law does not apply to confer jurisdiction. It cannot be invoked to confer jurisdiction where there is none or where it has been expressly ousted. Indeed jurisdiction is a matter of law and can be raised at any stage of the proceedings. The mere fact that the applicant did not raise the issue during the proceedings before the tribunal is not a bar to him raising it as he has done in the instant proceedings.

I have had occasion in the past to decry and lament the rampant abuse of jurisdiction by these tribunals. They have become like rogue elephants on the loose. They tend to think that they have jurisdiction to hear anything under the sun as long as it touches on land. There is need to reign them in by appropriate legislation. Indeed time might be nigh to do away with the entire Land Disputes Tribunals Act, for it appears to me that the good intention of the Act may have been missed or squandered in its application and enforcement. If anything it has created more problems than it was intended to solve.

Finally, it should be noted that during the interpartes hearing of this application, the respondent failed to turn up though she had been served with the application. As there was no explanation for her absence I directed the applicant to argue his application, the absence of the respondent notwithstanding. In reaching my decision however I have had due regard to her replying affidavit as well.

For all the foregoing reasons, I would allow the application dated 20th June, 2006 with costs to the applicant.

Dated and delivered at Nyeri this 20th day of November, 2008.

M.S.A. MAKHANDIA

JUDGE