

REPUBLIC APPLICANT

VERSUS

1. LAND DISPUTES TRIBUNAL, MUMONI DIVISION

2. MWINGI RESIDENT MAGISTRATE'S COURTRESPONDENTS

AND

MWANGANGI MASAKU INTERESTED PARTY

AND

MAITHYA NZUE EX PARTE APPLICANT

R U L I N G

The application before the court is dated the 2/11/2005. The Ex parte applicant seeks an order of certiorari to remove to this court for quashing, the decisions of the Mumoni Land, Disputes Tribunal dated 22/7/2003, in Tribunal Case No. 83 of 1998 and the Mwingi Resident Magistrate's Court case No. 83 of 1998 also dated 18/7/2005.

The two decisions were attacked by the applicant on the ground that the Land Disputes Tribunal acted Ultra vires its jurisdiction and powers under Section 3 (1) of the Land Disputes Act No. 18 of 1990. That the section confines the tribunal to arbitrate on disputes involving division of land, land boundaries, occupation and working on the land and trespass on the land. The applicant argued that the tribunal instead decided the ownership of land which it then awarded to the Interested Party.

Secondly, it was argued, the Tribunal awarded heavy costs in respect of which it has no jurisdiction.

Thirdly, although not argued, but is included in the written grounds of argument, the tribunal's composition was questioned.

Upon the above ground an order of certiorari was sought by Mr Ngala for the applicant.

In reply Ms Owino stated that the decision of the Land Disputes Tribunal was fair and just since a tribunal cannot adjudicate the boundaries, the usage and trespass without touching on ownership. She also argued that this application is incompetent because the applicant's appeal to the Provincial Land Disputes tribunal is still pending and that he cannot both appeal and at the same time seek the relief of certiorari. To the last point, the applicant admitted that he had appealed as stated indeed, but the existence of land Tribunals was put into uncertainty thereafter when they were all suspended by a Ministerial Order, an occurrence which then prompted this application to be filed lest the applicant be left without remedy whatsoever.

I have carefully perused the record including the record of the Land Tribunal. Clearly the tribunal's records confirm that what was before it was a substantive land claim. The plaint or statement of claim confirms that and the final order or award of the Tribunal giving the Interested Party the whole land confirms the same much more. I have considered that issue. I have come to the conclusion that Tribunal under Section 3 (1) of the relevant Act was not intended to deal and decide substantive land claims. That in my view is where the narrow issues the tribunal was intended to deal with and decide were specifically named. In this case therefore the tribunal acted ultra vires its powers.

On the issue of the composition of the tribunal, the applicant failed to prove any irregularity and the court will not say more than what the applicant said.

On the issue of a pending appeal in the Provincial Land Disputes Tribunal, the applicant explained that this application was filed only after the Minister deregistered all such tribunal country wide. Apart from the fact that the explanation makes sense to avoid the applicant losing or being without legal remedy, the respondent and Interested Party did not dispute the said abolition of the tribunals nor was there evidence of reinstatement of this particular tribunal.

As to costs, the Act is indeed silent as to whether the tribunal has power to award costs. Until it is shown that it indeed has that power, the best course is to presume that Parliament intended that to be the best position. The award of costs was therefore ultra vires the powers of the tribunal.

For the above reasons this application succeeds. An order of certiorari shall issue as prayed forthwith. Costs to the applicant.

Dated and delivered this 28th day of September, 2006.

D.A. ONYANCHA

JUDGE