



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MACHAKOS

Civil Misc Appli 158 of 2003

REPUBLIC.....APPLICANT

VERSUS

NZANGI KELI.....1ST RESPONDENT

THE CHAIRMAN, LAND DISPUTES TRIBUNAL

MUTOMO LOCATION.....2ND RESPONDENT

RULING

This application dated the 2.12.03 sought an order of Certiorari to remove the decisions of the Kitui Principal Magistrate's court in PMCC No. L.60 of 2003 dated 3.10.2003 to this court and quash it. The said order adopted the Mutomo Land Disputes Tribunal in Tribunal Case No. 47 of 2003.

The applicants grounds through Mr. Musyoki upon which he asked this court to quash the decisions of the Tribunal and of the court, included:-

- a) That the Land Disputes Tribunal lacked jurisdiction in dealing with a registered land under R.L.A. Cap 300.
- b) That the dispute before the Tribunal was not properly and legally registered as no registration fees was paid and no formal claim was filed.
- c) That record of award or judgement filed in the Principal Magistrate's Court was irregular, null and void.
- d) The award or judgment filed in the Magistrate's Court was irregular and was not signed by the Chairman of the Tribunal.
- e) The Tribunal was illegally constituted and therefore was null and void.

In reply to the above issues raised by the applicant, the respondent and the Interested Party answered that this court has no business looking into what happened in the Tribunal to produce the award later filed at the Principal Magistrate's Court. That it has also no business finding out whether a proper formal claim was filed before the Tribunal or whether registration fees was paid or not. That this court's business is to look at its file to see whether there is a substantive award, however and by whom signed.

Mr Kilonzi for respondent and the Interested Party, further argued that the Tribunal in this case was entitled to subdivide the land which was family land which was “division” within Section 3(1) of the Land Disputes Act of 1990. He also submitted that the High Court is not a supervisor of practice and procedures in the Tribunals, and that it should not attempt to impose ordinary court procedures in the tribunals. He further argued that this court should recognise and appreciate that membership of such tribunals is not trained and are not lawyers. That the formal forms availed to be used in various capacities are not substantive and that the tribunals follow substance and not form and technicalities.

I have carefully considered the arguments from both sides.

The first ground to deal with is that the Tribunal was illegal and that it did not amount to a tribunal envisaged under the relevant Act. Under the Land Disputes Act of 1990, the “Tribunal” must be set up by the Minister who publishes its district-wide name, and publishes the panel list of names that form the same. The tribunal is accordingly generally based at the District Headquarters where the District Commissioner appoints its Chairman. Any Tribunal that is therefore not district-based, is illegal unless all its members are all from the Districts list. It is my further understanding of this issue that the District Commissioner can appoint from his Minister-established list, a tribunal to adjudicate a land dispute anywhere in the District.

In this case, the Land Tribunal that sat to adjudicate the land dispute was that one belonging to Mutomo Division. There is no evidence that its members who sat in the dispute were members from the Minister-established panel at the District Commissioner’s Office nor was there evidence that the Chairman of the same was appointed by the District Commissioner. When these issues were raised, the court expected them to be rebutted through the replying affidavits and submissions of the Respondents and the Interested parties. However, the latter instead chose to rely on their argument that this court has no business digging to such issues. In my view, in matters of Judicial Review, this court supervises such tribunals to make sure that they obey written or established law and to make sure that they do not overstep the law or act ultra vires. This court is in that respect entitled to examine relevant records towards achieving its supervisory role. In this case I find that Mutomo Land Disputes Tribunal was not legally constituted within Section 3(1) of the Act and did not accordingly, have powers or authority to sit and hear the dispute in question. In short, it did not exist.

Further more, even if it were to be held that the Tribunal was a valid one, the next question is whether it had jurisdiction to deal substantively with registered land. L.R.No. Mutogune/Kawi/2108 is registered under the R.L.A Cap, 300. The Interested Party, from the records, claimed part of it and in fact the Tribunal subdivided it to give it to him. It thus dealt with ownership of the land substantively.

In my view and decision, it had no jurisdiction to do so and in doing so it acted ultra vires.

There is also the issue that the award or record filed in the Principal Magistrate’s Court was irregular. I have examined the record aforementioned. I am satisfied that it has adequate substance or the adequate evidence and the Ruling which is good enough to be acted upon. It can easily be reduced into a decree or any other form that can be acted upon by the regular court.

On the other hand however, there is no evidence that a proper statement of claim called “an application for determination of a dispute” in the established form or any form close to the established one, was filed before the Tribunal as required under Section 3(1) of the Act. Even after the same became an issue before this court, no effort to disprove the point by producing the actual document that had been filed, was made to show that the same was substantively, good enough. Under these circumstances, this court has no option but to agree that no substantive statement of claim upon which the tribunal fees could be charged, was actually filed. This conclusion inevitably raises the question as to whether the required registration fees was paid to the tribunal before the Interested Party’s claim was filed and heard. I am of the opinion that the interested Party paid no fees. This view is strengthened by the fact that the Interested Party made no effort to rebut this allegation through a replying affidavit. If the claim was filed without the necessary government service fees being paid as required, there would, in view, be a good ground to find that the claim filed was not legally valid. In the circumstances of this case as already stated, there is

no evidence of any nature that the fees were paid. Under these circumstances I have no hesitation in declaring the whole case before the Tribunal invalid.

Having come to the conclusions I have above, it is my view that the applicant has sufficiently persuaded this court to issue an order of certiorari to recall the decisions of the Mutomo Land Dispute Tribunal and the Principal Magistrate's Court for quashing. I make the following orders:-

ORDERS

- 1) An order of certiorari is immediately to issue removing to this court, the record of the Kitui Principal Magistrate's Court Case No. L.60 of 2003 between Nzangi Keli and Kasivi Kasemba & Joshua Kisoo Kasemba as well as the record of Mutomo Location Land Disputes Tribunal, in CaseNo.47 of 2003 between the same parties, for immediate quashing.
- 2) That the parties are granted liberty to re-file the dispute before a proper tribunal if they so wish within 60 days.
- 3) That each party shall bear his own costs.

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

D.A. ONYANCHA

JUDGE