



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
Misc Civil Appli 219 of 2002

IN THE MATTER OF MUTITU LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF INTERPRETATION AND APPLICATION OF THE LAND DISPUTES
TRIBUNAL

ACT NO. 18 OF 1990

REPUBLIC.....APPLICANT

VERSUS

1. THE LAND DISPUTES TRIBUNAL, MUTITU

2. THE ATTORNEY GENERAL.....DEFENDANTS

AND

TITUS MUSYIMI MUNUVE.....INTERESTED PARTY

RULING

This Notice of Motion dated 26.11.02 filed by the Exparte applicant on 27.11.2002, seeks for an order of Certiorari from this court directed at the Mutitu Land Disputes Tribunal to bring to this court, its order or judgement dated 5.10.2002, for quashing.

The reasons upon which the application is based are:-

1. Lack of jurisdiction by the said tribunal to make the relevant award.
2. Acting in contravention of the law by the Tribunal.
3. Acting beyond the scope of its power by the tribunal.

The application was prosecuted by Mr. Kilonzi for the applicant and Mr Siaji for the Interested Party, while Mr. Eredi represented the Respondent.

Mr. Kilonzi argued, inter alia, that the decision or judgement and proceedings before the tribunal were incurably irregular and incompetent because proceedings indicate that only the Chairman among the appointed elders was present and conducted same throughout.

He also argued that the claim being a full claim for land substantively, the tribunal had no jurisdiction to entertain it since its jurisdiction is limited to boundary, trespass, working on the land and subdivision claims.

Thirdly he argued that Mutitu Land Disputes Tribunal did not exist as only Kitui District Land Disputes Tribunal exists.

I have carefully perused the record with all the documents it contains. I have also considered the arguments advanced by all the parties.

There is no doubt that the proceedings of the tribunal were signed by the Chairman only when they should have been signed at least by a minimum of three elders including the chairman. While the coram would suggest that two other gazetted elders may have been present and taking part, the fact that they did not sign the proceedings at every stage signed by the Chairman, would suggest that they were not present and that the proceedings were conducted only by the chairman.

Furthermore, there are at the end of the proceedings two different judgments. The first one that is handwritten and appears to this court to be signed by the chairman alone, appears to have been written by the chairman. It is brief and appears genuine since it carries the identifiable signature of the chairman as do the rest of proceedings of that day. Unfortunately, this judgement which must have been signed by the chairman immediately it was completed, is not signed by the other two elders who are claimed to have been present. It is the view of this court, however, that had the two other elders have been present when it was written and signed on 5.10.2002 they would have as well signed it.

The purported second judgment of the Tribunal, is typed and dated 5.10.2002, just like the handwritten one. It is comparatively longer and goes to about two pages. It is not signed by the chairman whose rubber-stamp name of “ **G.K.Musaba**” is imposed at the end of it. The names of the other two elders – Justus M. Musyoka and Phillip M. Makuu are printed by hand, most probably and likely of the same person. There are no endorsed signatures on the judgment. The conclusion this court came to is that the judgment was written purposely for this case and much later.

In respect to either judgment, this court formed the opinion and came to the finding that, they both are a nullity. The first one for being signed only by the chairman when it should have been signed by at least three gazetted elders who must actually have heard the case. The second one because it is clearly unsigned.

Having come to the said conclusions, I find no necessity to consider the other grounds raised by the applicant, especially about the lack of jurisdiction by the said tribunal. Indeed if the tribunal was consisting the chairman only, by only the chairman, there is no way it could have had jurisdiction to hear the suit. Its proceedings would accordingly be ultra vires.

For the above reasons, this application has merit. It is granted as prayed. In this court’s view however, the best course would be a retrial provided the subject matter is within the jurisdiction of the Land Disputes Act Cap 18 of 1990. Otherwise the suit may be heard in ordinary courts if they have jurisdiction. If it goes back to the Tribunal, the suit should be heard by a different panel of elders. Orders accordingly. Costs to the applicant.

Dated and delivered at Machakos this **29th** day of **November, 2006**

D.A. ONYANCHA

JUDGE