



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Misc Appli 181 of 2003

REPUBLIC APPLICANT

VERSUS

1. LAIKIPIA LAND DISPUTES TRIBUNAL

2. NANYUKI S.R.M..... RESPONDENT

AND

DAVID KARANO KIHORIO INTERESTED PARTY

EXPARTE

THUMBI KIHORIO SUBJECT

RULING

By a notice of motion brought under Order LIII rule 3 of the Civil Procedure Rules, the applicant seeks orders of certiorari to move to this court and quash the decision of Laikipia Land Disputes Tribunal made on 6th March 2003 in respect of plot No. 1688 Mwenje, and also to remove to the court and quash the decision of the Senior Resident Magistrate Nanyuki in land case No. 2 made on 4th June 2003.

It is the applicant's contention that the Laikipia land Disputes Tribunal and the Nanyuki Senior Resident Magistrate's Court did not have jurisdiction to make the decisions made on 6th March 2003 and 4th June 2003 respectively as the dispute related to title to land registered under the Registered Land Act which by virtue of section 159 of the Registered Land Act (Cap 300) ought to have been heard by the High Court or the Magistrate's court.

The applicant relied on the following authorities:

- *Asman Maloba Wepukhulu & Another v/s Francis Wakwabubi Biketi C.A. Civil Appeal No. 157 of 2001*
- *Munyui Kahuha v/s Nganga Kahuha (Nairobi) HCCA No. 502/2000*
- *Republic v/s Land Disputes Tribunal Mutitu Division and Leonard Kivango Mwande (Machakos) HC.MISC. Civil Application No. 67 of 2001*
- *Republic v/s Nyandarua land Disputes Tribunal & Nyahururu Principal Magistrate's Court and Chege Mwangi (Nakuru) HCCC Application No. 220 of 2001.*

It was further submitted by the applicant that section 3(3) and 4 of the Land Disputes Tribunal Act were contravened as the proceedings were not numbered and the chairman of the Tribunal was not identified.

For the Respondent interested party it was submitted that the applicant having been a party to the proceedings before the Tribunal, and also participated in the adoption by the court of the judgment and having raised no objection to the jurisdiction of the tribunal or the court. He is now estopped from challenging the jurisdiction at this stage. The Respondent relied in the case of **John Kibe Thuo v/s Daniel Ndugu Muchuna H.C.C.A No. 58 of 2002 (Nyeri)**.

The dispute herein related to a parcel of land known as Laikipia/Kinamba Mwenje Block 1/1688 which land is registered in the name of the applicant as per copy of the Title Deed annexed to the applicant's supporting affidavit as "TK3". As per the proceedings before the land Dispute Tribunal and findings of the Tribunal (which were also annexed as TK4"). The applicant and the Respondent who are brothers jointly purchased the land together with their mother, but that the applicant had failed to transfer to the Respondent his share whereupon the Tribunal ordered that the Respondent be given 2 acres out of the suit land. The question is, was this a dispute relating to title to land?

The answer is clearly in the affirmative. The dispute was not one relating to "*division of or the determination of boundaries to land including land held in common or a claim to occupy or work land or trespass to land.*" Those are the matters in respect of which the Tribunal had jurisdiction to deal with. The tribunal therefore acted outside its jurisdiction in entertaining the dispute between the applicant and the Respondent which involved title to land.

It was submitted that the applicant is estopped from raising the issue of jurisdiction as he submitted himself to the jurisdiction of the tribunal. First, I must state that the authority of **John Kibe Thuo v/s Daniel Ndungu Muchuna (Supra)** relied upon by the Respondent is distinguishable as no appeal herein has been made by the applicant to the appeals Committee nor has the applicant come before this court on appeal, but the applicant is invoking the supervisory jurisdiction of this court to control the excesses of the land Disputes Tribunal in acting outside its jurisdiction and prevent the Resident Magistrate's Court from acting on the award of the tribunal made without jurisdiction.

I find therefore that the applicant is properly before this court and cannot be estopped from raising the issue of jurisdiction which is an issue of law. I am satisfied that the Tribunal acted outside its jurisdiction in entertaining a dispute involving title to land. It's award having been made without jurisdiction could not also be adopted as judgment of the court by the Resident Magistrate. I find that the orders of certiorari sought by the applicant are appropriate. Accordingly I grant the orders as prayed. Each party to meet his own costs.

Dated signed and delivered this 28th day of July 2005.

H. M. OKWENGU

JUDGE