



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

Misc Civ Appli 107 of 2005

REPUBLIC.....APPLICANT

VERSUS

NYANDARUA DISTRICT LAND DISPUTES TRIBUNAL...1ST DEFENDANT

PETER NDUNGU KIRIKA.....2ND DEFENDANT
LUCIA WAMBUI

KIRIKA.....SUBJECT

RULING

This subject herein filed a notice of motion dated 9th February 2005 and prayed for an order of certiorari to remove to this court the proceedings and award of the Nyandarua Land Disputes Tribunal Case No. 11 of 2004 for purposes of quashing the same. The main ground for seeking the said order was that the said Tribunal proceeded to hear and determine the alleged dispute in excess of its jurisdiction and powers conferred to it under Section 3(1) of the Land Disputes Tribunals Act No. 18 of 1990 in that the applicant was the registered proprietor of the suit land at the material time.

The second respondent was served with the said application and when the matter came up for hearing on 26/5/2005 he sought an adjournment to enable him file his papers in reply. The application for adjournment was granted and the matter was adjourned to 13/7/2005 but the second respondent was ordered to pay that day's costs (26/5/2005) to the applicant.

The second respondent thereafter instructed M/S Nyoike Mutonyi & Co. Advocates and when the matter came up for hearing again on 13/7/05 the second respondent through his counsel said that he was not contesting the matter but was not willing to pay the costs of the same.

The applicant's counsel welcomed the concession but insisted that the second respondent should pay the costs as he had taken the matter to a Tribunal which had no jurisdiction and as a result the applicant had been forced to incur considerable costs.

Mr. Mbiyu, holding brief for Mr. Mutonyi for the second respondent stated that the second respondent had been advised by the area District Officer to file the matter in the Tribunal and he did so since he did not have the benefit of legal counsel. He further said that even the applicant took part in those proceedings.

I have taken into consideration the brief submissions that are advanced by the advocates for the parties

herein.

In this country we have an adversarial system of justice and parties to disputes are presumed to know the law and/or are expected to seek legal counsel in their pursuit of justice in the event that they do not know the law. The fact that a party was not represented in any proceedings is not sufficient reason to cause the successful one to be denied costs. Costs follow the event unless the court, for good reason, orders otherwise. If the second respondent had consulted an advocate before he filed his claim in the said Tribunal, I believe he would have been advised that the Tribunal did not have jurisdiction to deal with his kind of dispute.

I therefore grant the orders as sought in the application dated 9th February, 2005 and award costs of the same to the subject as against the second respondent.

DATED, SIGNED AND DELIVERED at Nakuru this 28th day of July, 2005.

D. MUSINGA

JUDGE

28/7/2005

Ruling delivered in the open court in the presence of Mr. Mbiyu holding brief for Mr. Mutonyi for the respondent and in the absence of the applicant.

D. MUSINGA

JUDGE

28/7/2005