

7.9.1994 now supersedes the one of 1992. The applicant is also asking that the District Adjudication Officer be compelled to reinstate the boundary to that made in 1992 but that cannot be since the decision of 7.9.1994 is still in existence not set aside or quashed. It follows that if the order of certiorari can not be issued then those of mandamus cannot also issue as the latter is based on the former.

Mr. Omirera submitted that the provisions of the Land Adjudication Act Cap 284 are not applicable because the land in question is not under an Adjudication Section but governed by Agricultural Act Cap 318 and that the decision made should have been challenged. Counsel did not refer the court to any provisions of the Agricultural Act. This matter had been filed in court vide annexure KM5 – copy of plaint and was withdrawn by consent of the parties on the basis that it fell under the Adjudication Act and it was indeed referred to the Adjudication officer who dealt with the matter and reached a decision annexure KM 4 which was never challenged as to who had jurisdiction. That objection raised by respondents must fail.

I do find merit in the objection raised by interested party as considered above, the application is incompetent and is hereby struck out with costs to respondents and interested party.

Dated, read and delivered at Machakos this 27th day of April, 2004.

R. V. WENDOH

JUDGE