

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
MISC. CIVIL APPLICATION NO. 5 OF 2000

**IN THE MATTER OF: AN APPLICATION BY THALI NGALI HINZANO
FOR AN ORDER OF CERTIORARI AND
PROHIBITION**

**IN THE MATTER OF: THE LAND DISPUTES TRIBUNALS ACT 1990
18 OF 1990**

AND

**IN THE MATTER OF: THE DISTRICT MAGISTRATE'S COURT
KALOLENI CIVIL CASE NO. 48 OF 1999 JAMES
KALUKO KYALO VS KATANA KITUKU
KACHECHI**

REPUBLIC.....NOMINAL APPLICANT

V E R S U S

THE DISTRICT MAGISTRATE'S COURT AT KALOLENI..... RESPONDENT

AND

1. JAMES KALUKO KYALO

2. KATANA KITUKU KACHECHE.....INTERESTED PARTIES

EXPARTE

THALI NGALA HINZANO

Coram: Before Hon. Justice Mwera

Mulwa for 1st interested party

Okello for the Respondent

Wanyonyi for 3rd Interested Party

No appearance for 2nd interested party

Court clerk – Sango

INTERIM R U L I N G

When Mr. Kimani was arguing the application for certiorari in that the orders made by the Learned Trial Magistrate in Kaloleni District Magistrate's Court No. 48 of 1999 James Kyalo VS Katana Kituku sometime in November 1999 or thereabout, be brought up her to be quashed, he intimated that the land subject in that case was before a Land Disputes Tribunal (so the verifying affidavit of the applicant said at paragraph 10), the court expressed a desire to have the proceedings of that tribunal placed before it in case they were necessary in determining this notice of motion. Although Mr. Kimani maintained that on the

basis of the lack of jurisdiction by the Learned Trial Magistrate to entertain causes founded on trespass to land as per the said suit, he may nonetheless be granted leave to file the tribunal proceedings and other related detail. That because the said suit was based on trespass such a claim fell to be entertained exclusively by the tribunal set up under the Land Disputes Tribunals Act. The other counsel did not think like Mr. Kimani, arguing that he should still put his case even without the said Land Disputes Tribunal proceedings.

After hearing counsel and perusing the plaint in the said lower court case, the court is satisfied that the claim therein was rooted in trespass. The plaintiff (Kyalo) the 1st interested party here, pleaded:-

“4, On or about the year 1995 – 1996 the defendant unlawfully ente red, encroached and trespassed into the plaintiff’s said land and premises and constructed house live (?) structures on the plaintiffs shamba”

And the notice of motion of 11th December 1999 which the same Kyalo filed and the Learned Trial Magistrate heard and delivered a ruling on claimed that there was entering on the said land – an act the Learned Trial Magistrate was asked to restrain. He did so restrain. Now if the central issue is whether the trial magistrate had jurisdiction to entertain causes based on trespass to land or not, then the land disputes Tribunal proceedings do not appear necessary now. Accordingly they will not be introduced now. The parties to proceed to complete their submissions on date to be fixed now.

Orders delivered on 15th September, 2004.

J.W. MWERA

JUDGE