



REPUBLIC OF KENYA

IN THE HIGH COURT AT KITALE

MISCELLANEOUS CIVIL APPLICATION NO 91 OF 1999

DAVID KADIMA WAMUKOYA APPLICANT

VERSUS

KIPSAINA LAND DISPUTES TRIBUNAL

MARY WINNIE WAMUKOYA & ANOTHER.....RESPONDENT

RULING

Pursuant to leave of the Court granted to the applicant on 17/8/99 David Kadima Wamukoya, he brought to this court the Amended Motion of the one originally dated 18th May, 2001. He prays for orders that an order of *certiorari* be issued to remove into this court and quash the decision of Kipsaina Land Disputes Tribunal which was read and adopted as judgment of the Court in Kitale PMC Land Case No. 5 of 1999 on the 17/4/99. The necessary affidavit in support and statement of facts as well as the proceedings and the award of the Tribunal have been annexed to the application.

The main complaint in this application is that the Tribunal acted without jurisdiction in that what was in issue was a succession dispute. It is contended that the 2nd respondent, Mary Winnie Wamukoya, was seeking orders for part distribution of her deceased husband's estate, namely, Sinyerere Scheme Plot No. 162. The decision of the Tribunal was that she had inherited that estate exclusively, and to the exclusion of the applicant, who was ordered to be evicted. The applicant also contends that the Elders who handed out the award failed to date it contrary to the mandatory provisions of section 3(8) of Land Disputes Tribunal Act. Lastly, that instead of the number of the Elders being either 3 or 5, there were 4 presiding over the proceedings and that the 4th one did not sign the award.

The application was opposed by the 2nd respondent on the basis that her reference had nothing to do with succession issues. Miss Fuchaka for her contended that her claim was to have the applicant evicted so that she could occupy and work the suit land. She submitted that only 3 Elders presided over the proceedings and dated the award by rubber-stamping it at the conclusion thereof.

In the proceedings before the Tribunal, there was uncontroverted evidence that the suit land was among other parcels belonging to the deceased husband of the 2nd respondent. The tribunal received evidence from the parties herein and in what I consider to be a well reasoned decision, reached the conclusion that the suit land was the matrimonial home of the deceased and the 2nd respondent and her 3 children. Her co-wives had also been provided for in various other parcels in accordance with the Luhya customs. The Tribunal also reached the conclusion, upon being shown a title deed by the 2nd respondent, that in his life-time, the deceased transferred to her sole proprietorship the suit land.

It would follow, therefore, that the claim before the Tribunal by the 2nd respondent was not one of succession to the suit land, but one which sought to evict the applicant therefrom as a trespasser. The applicant had moved into part of the suit land claiming entitlement to 5 acres. Under section 3(c) of the Act, the Tribunal had jurisdiction to determine whether or not in the circumstances, the applicant was a trespasser, it was immaterial that the suit land was registered.

Turning to the issue of the composition of the Tribunal, my perusal of the proceedings shows that there were only 3 Elders from the start to the conclusion thereof. Although a 4th Elder was named, at no time did he participate in the proceedings or in the decision of the Tribunal. The mere presence of his name, in my considered opinion, did not contravene section 4(2) of the Act.

Section 3(8) of the Land Disputes Tribunals Act is couched in mandatory terms that the Tribunal shall give reasons for its decision, which shall contain a summary of the issues and the determination thereof, and which shall be dated and signed by each member. In the instant case all the three Elders who participated in the proceedings did sign the award. It is apparent in the proceedings that they did not date it in long hand or in typed form.

The Act is silent on how the award should be dated and, in my view, I have to give it a liberal interpretation, that is, an indication of the day, month and year when the award was signed by the Tribunal members. I hold that a date rubber stamp as occurred in the instant case satisfies the requirement of section 3(8) of the Act.

Consequently, and for the reasons in the body of this ruling, there is no basis for issuing an order of *certiorari* prayed for in the motion herein.

The application fails and is dismissed with costs to the 2nd respondent. I so order.

Dated and delivered at Kitale this 30th day of January, 2003

G.E.O. TUNYA

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JUDGE