

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS CIVIL APPLICATION NO.86 OF 2002

IN THE MATTER OF: APPLICATION FOR LEAVE FOR JUDICIAL REVIEW

A N D

IN THE MATTER OF: ORDER LIII OF THE CIVIL PROCEDURE RULES

A N D

IN THE MATTER OF: SECTION 8 OF THE LAW REFORM ACT (CAP.26)

LAWS OF KENYA

BETWEEN

REPUBLIC.....APPLICANT

A N D

GANZE DIVISIONAL LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

(Ex-parte KAHINDI NDUNDI)

R U L I N G

I have considered the grounds upon which this application is brought as contained in the supporting documents. I have also heard and considered the argument presented by Mr. Masika for the Applicant. I am of the opinion that there are good reasons for removing the said decision of Ganze Divisional Land Disputes Tribunal to this court for the purpose of quashing the same. This application is not opposed by any replying affidavits or otherwise despite the fact that it was served upon the Chairman of the Tribunal. The evidence adduced in the statement of facts and other related documents is accordingly presumed to be true since it is on oath.

The Respondent also chose not to attend during this hearing, confirming that he is not caring as to whether or not this court makes the serious orders prayed for in this application. It has been shown that the Applicant was not given an opportunity to put up his case before the Tribunal. The Tribunal acted in breach of a basic right of the Applicant. It was a breach of a rule of natural justice which accordingly taints the decision delivered by the Tribunal. The decision also is shown to have been an affront against another basic rule of justice, that a matter decided between the same parties in respect of the same issues, should not be decided a second time by the same Tribunal or another having jurisdiction to try it.

In subjecting the same matter between the same parties and in respect to the same issues to trial for the second time, the Tribunal acted ultra vires its powers. The process also indeed amounted to an abuse of the Tribunal's sense of justice and discretion. I accordingly allow this application as prayed with costs. The order of Certiorari is granted. The order of Ganze Division Land Disputes Tribunal in Land Dispute No.GD/LND.4/2002 dated 18.12.2000 is hereby recalled to this court and quashed.

Dated and delivered at Mombasa this 5th day of June, 2002.

D. A. ONYANCHA

J U D G E