



**Mwakutengeza v Mainland Estate Limited (Miscellaneous Application  
72 of 2012) [2020] KEELC 3992 (KLR) (4 March 2020) (Ruling)**

*Rashid Hamisi Mwakutengeza v Mainland Estate Limited [2020] eKLR*

Neutral citation: [2020] KEELC 3992 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
MISCELLANEOUS APPLICATION 72 OF 2012**

**M SILA, J**

**MARCH 4, 2020**

**BETWEEN**

**RASHID HAMISI MWAKUTENGEZA ..... APPLICANT**

**AND**

**MAINLAND ESTATE LIMITED ..... RESPONDENT**

**RULING**

(Application seeking vesting order for title to land; applicant wishing to enforce an award of the Land Disputes Tribunal; applicant not the claimant before the Tribunal and lacks capacity to file this suit; award of Tribunal being one over title to land for which the Tribunal did not have jurisdiction; Court unable to issue vesting order on an illegal award; application dismissed)

1. This suit was originated through a Miscellaneous Application said to be brought pursuant to the provisions of Section 3A of the *Civil Procedure Act*, Cap 21, Laws of Kenya, Order 50 Rule 1, and Section 143 of the Registered *Land Act*, Cap 300, and all enabling provisions of the law. The applicant wants the following orders (slightly paraphrased to eliminate obvious grammatical errors) :-
  - i. That this Honourable Court be pleased to issue a vesting order in respect of plot number Kwale/Tiwi/42 in favour of the applicant.
  - ii. That this Honourable Court be pleased to issue an order compelling and requiring the Senior Resident Magistrate Kwale to sign the transfer forms and or any document in respect of the suit property Kwale/Tiwi/42.
  - iii. That the costs of this application be provided for.
2. The application is based on the following grounds :-



- a. That the applicant and his family members came into possession of the suit property after independence.
  - b. That the applicant filed a dispute with the Matuga Land Disputes Tribunal whose verdict was read and adopted as a judgment of the Court under Section 7 of the Land Disputes Tribunal Act by the Senior Resident Magistrate Kwale, in Land Case No. 27 of 2010.
  - c. It is therefore in the interests of justice that the vesting orders sought be granted in favour of the applicant herein.
  - d. This Honourable Court has jurisdiction to grant the orders sought.
3. The application is supported by the affidavit of the applicant. He has deposed that in the year 2009, his brother, Said Ali Mwakutengeza filed a dispute before the Matuga Land Disputes Tribunal being case No. 59 of 2009 and that the award thereof was read and adopted as the judgment of the Senior Resident Magistrate's Court in Land Case No. 27 of 2010. He has annexed a copy of the award and an order from the Magistrate's Court, Kwale. He has mentioned that the respondent did not lodge any appeal. He thus believes that he deserves the vesting order that he has sought.
  4. I invited counsel for the applicant to file written submissions which he did and I have taken note of these.
  5. I have considered the application which I must dismiss.
  6. First, this application has been filed by one Rashid Hamisi Mwakutengeza. He is certainly not the person who filed the dispute before the Land Disputes Tribunal Matuga, and he is not the beneficiary of the award issued by the Tribunal. The claimant before the Tribunal was one Saidi Ali Mwakutengeza. I note that in his supporting affidavit, the applicant deposes that the claimant is his brother. The whereabouts of Said Ali have not been made to this court and the mere fact that the applicant is his brother does not give the applicant capacity to make this application. It is only the beneficiary of the award who has capacity to try and enforce it. For that reason alone, this application must fail.
  7. Even if the applicant had capacity, I would still have dismissed this application for the reason that I can see for myself that the Tribunal proceeded to determine a dispute that it had no jurisdiction to hear. I will be condoning an illegality if I am to issue a vesting order to enforce an award that was not made with jurisdiction. I can see from the award that the Tribunal was determining an ownership dispute between the claimant and the respondent. The Land Disputes Tribunal was not granted power to hear such disputes. The jurisdiction of the Tribunal was provided for in Section 3 (1) of the Land Disputes Tribunal Act (repealed), which provided as follows :-
    1. Subject to this Act, all cases of a civil nature involving a dispute as to—
      - a. the division of, or the determination of boundaries to land, including land held in common;
      - b. a claim to occupy or work land; or
      - c. trespass to land, shall be heard and determined by a Tribunal established under section 4.
  8. The dispute before the Tribunal did not fall under any of the above categories. That being the case, the award was made out of jurisdiction and the same cannot be enforced. No vesting order can issue arising from such an award.



9. I do not see the need of saying more.
10. For the above reasons, this application is dismissed. There will be no orders as to costs for the reason that the respondent did not enter any appearance.
11. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 4<sup>TH</sup> DAY OF MARCH, 2020.**

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**MUNYAO SILA,**

**JUDGE.**

In The Presence Of:

Mr. Nyange for the applicant.

Respondent; Absent.

Court Assistant; David Koitamet.

