



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CONSTITUTIONAL & JUDICIAL REVIEW DIVISION

JUDICIAL REVIEW NO. 164 OF 2009

MWANGLA NJUGA.....1ST APPLICANT

MWANGOME NJUGA.....2ND APPLICANT

VERSUS

THE CHONYI DIVISION LAND

DISPUTE TRIBUNAL.....1ST RESPONDENT

THE SENIOR RESIDENT MAGISTRATE

COURT IN KILIFI.....2ND RESPONDENT

GOSHI NGUJO.....INTERESTED PARTY

RULING

1. Pursuant to leave granted on the 17th March, 2009, the Applicants filed an application seeking the following Judicial Review orders:
 - a) An order of prohibition be granted against the 2nd Respondent prohibiting it from in any other manner whatsoever dealing with Land Dispute Case No. 4 of 2009 filed in the 2nd Respondent court and in particular from issuing any orders of execution emanating from the land dispute case number 4 of 2009 or any other orders of the like nature in respect of property known as Chonyi/Galanema/306 registered in the names of the Applicants.
 - b) An order of certiorari be granted to remove the proceedings and entire dispute in Chonyi Land Disputes Tribunal Case No. 29/03/2007 Judgment in the Senior Resident Magistrate's Court Kilifi in Land Dispute No. 4 of 2009 to this court and for the same to be quashed in their entirety.
 - c) Costs incidental to and attendant to both the Chonyi Land Disputes Tribunal Case No. 29/03/2007 and the Senior Resident Magistrate's Court Kilifi in Land Dispute No. 4 of 2009 as well as those of these proceedings together with interest thereon.
2. The application is premised on the grounds set out in therein and those in the Verifying Affidavit sworn by the 1st Applicant on 16th March, 2009.
3. The Applicants allege that they together with one, MWAGAMBO NGUJO (deceased), are the registered owners of land known as Chonyi/Galanema/306 (hereinafter to be referred to as the suit land) having been issued with the title deed to the suit land on 27th September, 2005. The Applicants contend that they were registered as absolute proprietors with each person owning a $\frac{1}{3}$ of the property.
4. The Applicants aver that the Interested Party commenced a suit before the Chonyi Land Disputes Tribunal seeking to be recognized as the administrator of the estate of the late MWAGAMBO NGUJO and therefore to be acknowledged as having an interest in the $\frac{1}{3}$ share owned by the deceased in the property.

5. The Applicants claim that the dispute was heard and the tribunal directed that the suit land be awarded to the Interested Party and his two brothers; NYAMAWI NGUJO and NJUGA NGUJO and the Applicant's father.
6. It is the Applicants' case that the decision of the tribunal effectively cancelled/revoked the title already issued to them and ordered for the rectification of the property register relating to the suit land.
7. The Applicants fault the tribunal for its decision as they contend that it lacked the jurisdiction under the Land Disputes Tribunal Act to reach such decision. According to the Applicants, the tribunal can only deal with matters relating to division and determination of boundaries to land, claims relating to occupation and working on land and trespass to land.
8. As a result the Applicants argue that the 2nd Respondent could not adopt the award of the tribunal.
9. The Respondents and Interested Party did not respond to the application.

Hearing

10. The matter came up for hearing for on 12th July, 2018. Mr. Buti counsel for the Applicants submitted that the applicants were the registered owners of the suit land but their registration was reversed by the Chonyi Land Dispute Tribunal vide case no. 29/3/2017. Counsel contended that the complaint before the tribunal that had been lodged by the Interested Party involved registration of ownership and title to the land. Counsel argued that the registration of the suit land had been made under the repealed Registration of Lands Act (RLA) and the Tribunal lacked the jurisdiction to reverse a title registered under the Act.
11. Mr. Buti submitted that the 2nd Respondent could not adopt the decision by the Tribunal as the decision was unlawful. Counsel urged the court to quash the decision made by the Tribunal for want of jurisdiction.
12. Mr. Mwanjeje, counsel for the Respondents submitted that Section 3 of the repealed Land Dispute Tribunal Act did not limit the jurisdiction of the Tribunal thus the decision reached by the Tribunal was not unlawful. Further, Counsel stated that the 2nd Respondent has no jurisdiction to vary or alter an award made by the Tribunal.
13. The Interested Party who appeared in person concurred with the Respondents.
14. Mr. Buti in rebuttal submitted that the Tribunal can only deal with matters relating to determination of boundaries, occupation and working on land and trespass to land. Counsel suggested that any other matter would be outside the jurisdiction of the Tribunal.

The Determination

15. Having carefully read through the application the only issue that arises for determination is whether the 1st Respondent had the jurisdiction to entertain the dispute that was brought before it by the Interested Party.
16. The Applicants contend that the 1st Respondent by virtue of the Land Disputes Tribunals Act (repealed) lacks the jurisdiction to determine disputes relating to title to land. The Respondents are of a contrary opinion. Section 3 (1) of the Lands Disputes Tribunals Act grants the Tribunals the jurisdiction to deal with the following matters:

(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

17. The claim as between the Interested Party and the Applicants before the 1st Respondent related to the ownership of the suit land. In my view such a claim does not fall within the jurisdiction of the 1st Respondent. The 1st Respondent is not mandated to deal with claims on ownership or title to land. To do so would be to act in excess of the 1st Respondent's jurisdiction. I therefore agree with the decision of Odunga J. in **Masagu Ole Koitelet Naumo vs. Principal Magistrate Kajiado Law Courts & another [2014] eKLR** where he observed that:

“In my view the view that the Tribunal had no powers to deal with registered land is incorrect. What the Tribunal was prohibited from undertaking is a determination with respect to title to land. Otherwise section 3 of the Land Disputes Tribunals Act did not limit the jurisdiction of the Tribunal to lands outside the regime of registered land. I associate myself with the decision of Khamoni, J in Republic vs. Chairman Land Disputes Tribunal, Kirinyaga District & Another Ex Parte Kariuki [2005] 2 KLR 10 to the effect that the Legislature, and definitely, framers of the Land Disputes Tribunals Act, knew the Act was intended to give Land Disputes Tribunals jurisdiction to adjudicate over all land in Kenya, including land registered under the Registered Land Act and therefore in cases where the dispute fell within section 3 aforesaid, it did not matter whether or not the land in question was registered under the Registered Land Act”.

18. However, I disagree with the Applicants that because the suit land was registered under the Registered Lands Act (RLA) (repealed) the Tribunal could not deal with any dispute regarding the suit land. The Tribunal could deal with disputes involving the suit land but limited to trespass, occupation of the land and division or determination of boundaries to the land.

19. Being that the 1st Respondent did not have the jurisdiction to deal with the matter, the appropriate remedy in this case would be an order of certiorari to bring into this court the proceedings and decision of the 1st Respondent to be quashed.

20. The Applicants also prayed that the proceedings and Judgment in Senior Resident Magistrate's Court Kilifi in Land Dispute No. 4 of 2009 which adopted the award of the 1st Respondent be quashed. The Respondents contended that under the Land Disputes Tribunal Act a magistrate has no leeway to alter or amend a decision of the Tribunal. I do agree. Section 7 of the Land Disputes Tribunal Act read as follows:

7. (1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal.

(2) The court shall enter Judgment in accordance with the decision of the Tribunal and upon judgement being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.

21. A Magistrate's Court cannot alter or vary a decision of the Tribunal. The hands of the lower court are tied and it must adopt the decision of the Tribunal as it is as its Judgment. Musinga, J. (as he then was) in the case of **Peter Ouma Mitai vs. John Nyarara Kisii HCCA No. 297 of 2005**, opined that:

“The jurisdiction of the Land Disputes Tribunal is clearly set out in section 3 of the Land Disputes Tribunal Act. Once a Tribunal has determined a dispute, section 7(1) of the Act requires the Chairman to cause the decision to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal....The provisions of section 7(2) of the Act are explicit as to what has to be done by the magistrate's court. That provision of the law does not leave any room for a magistrate to review, alter, amend or set aside the Tribunal's award. If any of the parties are aggrieved by the said award they can either prefer an appeal to the Appeals Committee as provided under section 8(1) of the Act or if there are reasonable grounds for challenging the decision by way of a judicial review application, proceed to institute such proceedings before the High Court and not otherwise.”

22. The action of the 2nd Respondent of adopting the decision of the 1st Respondent was not unlawful. However, the judgment of the 2nd Respondent cannot stand as this court has found that the 1st Respondent lacked the jurisdiction to entertain the claim in the first instance. The court therefore has no option but to also issue an order of certiorari quashing the Judgment issued by the 2nd Respondent.

23. For the foregoing reasons, orders are issued as follows:

a) An order of certiorari be and is hereby granted to remove the proceedings and decision dated 22nd January, 2009 of the 1st Respondent in Chonyi Land Disputes Tribunal Case No. 29/03/2007 and the proceedings and Judgment dated 17th February, 2009 of the 2nd Respondent in Senior Resident Magistrate's Court Kilifi- Land Dispute No. 4 of 2009 into this court and the same are hereby quashed.

b) Costs of the application to the Applicants.

Dated, Signed and Delivered in Mombasa this 15th day of October, 2018.

E. K. O. OGOLA

JUDGE

In the presence of:

Mr. Buti for Ex parte Applicant

Mr. Mkok for Hon. Attorney General

Absent Respondent

Mr. Kaunda Court Assistant