



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

MISC. APPLICATION NO. 274 OF 2006

REPUBLIC.....APPLICANT

VERSUS

MAKUENI DISTRICT LAND TRIBUNAL.....1ST RESPONDENT

MAKUENI SENIOR RESIDENT MAGISTRATE'S COURT...2ND RESPONDENT

AND

WILLIAM WAMBUA NGUNDA.....INTERESTED PARTY

AND

MUKWALA NGUNDA.....EX-PARTE APPLICANT

RULING

1. The application dated 4th January, 2007 seeks orders that the award, findings and verdicts of the Makueni Land Disputes Tribunal Case No. 81 of 2006 and read to the parties by the Makueni Senior Resident Magistrate's Court in LDTC Miscellaneous Number 53 of 2006 on 5.11.2006 be declared null and void and be removed and brought forth to the High Court for purposes of being quashed and or set aside.
2. According to the affidavit in support, the statement of facts and the verifying affidavit, the Land Disputes Tribunal, Makueni District in Case No. 81 of 2006 was adopted as the judgment of the court by the SRMC, Makueni Land Disputes Tribunal Case No. 53 of 2006 on 15th November, 2006.
3. In its decision, the Land Dispute Tribunal, Makueni subdivided land parcel Nos. Nzau/Kalamba/719 and Nzau/Kalama/505 between the ex-parte Applicant (*herein Applicant*) and the interested party. The Applicants complaint is that the tribunal did not have the requisite jurisdiction to hear the case.
4. The application is opposed. According to the replying affidavit, the land in question was ancestral land. That during the land adjudication process, the land was registered in the Applicant's name to hold in trust for himself and the other family members. It is contended that the tribunal had jurisdiction to hear the case as it involved a claim to occupy and work land.
5. The tribunal's decision was that the interested party was to be given a share of the land in question by the Applicant. The tribunal then directed the District Surveyor to implement the decision on the ground.
6. The aforesaid decision by the Tribunal was clearly a decision on subdivision and ownership of land. The Tribunal overstepped its mandate as provided for by Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990 which stipulates as follows:

“3.(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."

7. Consequently, the application is allowed as prayed. The parties herein can consider having their dispute heard by a court of competent jurisdiction. Taking into account the circumstances of this case, each party to meeting own costs.

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B. THURANIRA JADEN

Dated and delivered at Machakos this 5th day of June, **2015**

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B. THURANIRA JADEN

JUDGE