



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISC. CIVIL APPLICATION NO. 284 OF 2009

IN THE MATTER OF: AN APPLICATION BY EPHRAIM MWANGI

MAINA FOR LEAVE TO INSTITUTE JUDICIAL REVIEW PROCEEDINGS FOR ORDERS

OF CERTIORARI, PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF: THE MSAMBWENI LAND DISPUTES TRIBUNAL CASE NO. 91 OF 2006

MOHAMED KASSIM REJE VERSUS ALFONCE GACHOKA KINYANJUI & EPHRAIM MWANGI MAINA

AND

IN THE MATTER OF: THE KWALE PRINCIPAL MAGISTRATE'S COURT LAND DISPUTE CASE NO. 18 OF 2009

MOHAMED KASSIM REJE VERSUS ALFONCE GACHOKA KINYANJUI & EPHRAIM MAINA MWANGI

AND

IN THE MATTER OF: THE REGISTERED LAND ACT

AND

IN THE MATTER OF: TITLE NUMBER KWALE/MAJORENI/941

BETWEEN

EPHRAIM MAINA MWANGI.....APPLICANT

AND

MOHAMED KASSIM REJE.....1ST RESPONDENT

PRINCIPAL MAGISTRATE, KWALE.....2ND RESPONDENT

LAND REGISTRAR, KWALE.....3RD RESPONDENT

THE CHAIRMAN, MSAMBWENI LAND DISPUTES TRIBUNAL.....4TH RESPONDENT

RULING

Before court is the Notice of Motion dated 15-6-2009 by which the Exparte Application seeks the following orders:-

1. "An order of certiorari do issue removing to the High Court for quashing the proceedings and judgment dated 18th December, 2008 of the Msambweni Land Disputes Tribunal in Land Dispute No. 91 of 2006 between **MOHAMED KASSIM REJE** and **GACHOKA KINYANJUI & EPHRAIM MWANGI MAINA**
2. An order do issue prohibiting the Msambweni Land Dispute Tribunal from entertaining any claim and or complainant by **MOHAMED KASSIM REJE** and/or any other person in respect of Title No. Kwale/Majoreni/941 or any other such claims as pertains the ownership of the property compromised in the said title.
3. An order of mandamus do issue to compel the District Land Registrar, Kwale/Majoreni/941 and cancel any title issued to **MOHAMED KASSIM REJE, BAKARI KASSIM REJE, HASSAN ABDALLA CHIRIWA, JUMA SAID MFUNGA** or any other such person and to restore in the register the name of **EPHRAIM MWANGI MAINA** as the absolute proprietor and to restore thereof.
4. The cost of these proceedings be awarded to the Applicant"

The application was opposed. The Respondent and the 2nd Interested Party all filed grounds of opposition on 25/3/2013 in which they termed the current Notice to be frivolous, vexatious and an abuse of court process. The application was disposed of by way of written submissions. The applicants, the Respondents and the 2nd Interested Party all filed their written submissions.

The first Respondent though duly served through their lawyers Ojode and Onjoro Advocates on 27/6/2014 opted not to file any submissions. As such the court proceeded to reserve a date for ruling without any further reference to the 1st Interested Party.

The background of the case is as follows:-

The Ex Parte applicant Mr. **'EPHRAIM MWANGI MAINA'** claims to be the registered owner of Plot No. Kwale/Majoreni/941 (the 'Suit Property') having purchased the same from the then registered owner **"ALPHONCE GACHOKA KINYANJUI"** way back in 1995. The 1st Interested Party **"MOHAMED KASSIM REJE"** lodged a complaint with the Msambweni Land Disputes Tribunal (hereinafter referred to as the 'MLDT') with regard to the said plots title. On 18/12/2008 the Msambweni Land Disputes Tribunal ordered that the applicants title to the suit plot be revoked and a new title be issued to the 1st Respondent. The Principal Magistrate, Kwale adopted this order of the Msambweni Land Disputes Tribunal on 14/3/2009. The applicant being aggrieved by the decision of the Msambweni Land Disputes Tribunal came to the High Court seeking redress on the ground that the said tribunal lacked jurisdiction to determine a complainant relating to the title or ownership of land. The applicant also complained that the decision of the Msambweni Land Disputes Tribunal was prejudicial to him as the rules of national justice were breached during the procedures before that tribunal as he was never served with any papers before the tribunal proceeded to hear the matter.

I have carefully considered the submissions filed in respect to this application as well as the authorities

cited therein. The Msambweni Land Disputes Tribunal was established under the land Disputes Tribunal Act – Section 3(1) of the said Act provides that

“Subject to this Act, all cases of a civil nature involving a dispute as to:-

1. Boundaries of or the determination of boundaries to land indulging land held in common.
2. A claim to occupy or work land.
3. Trespass to land

Shall be heard and determined by a Tribunal established under section 4.

As such Land Disputes Tribunals are **not** vested with authority or jurisdiction to adjudicate and determine dispute relating to the question of ownership of land. The Msambweni Land Disputes Tribunal in its finding held that the said plot ought to revert to the 1st Interested Party. It further recommended that the Kwale District Land Registrar immediately revoke and cancel the title deed held by the applicant and issue a new title deed to the 1st Interested Party. This finding was clearly ultra vires the powers donated to the tribunal under section 3(1) of the Land Disputes Act. A determination which made ultra vires is without consequence and cannot be upheld by this court.

The applicant has also submitted that he was denied opportunity to be heard before the tribunal. I have observed that the original owner of the said plot “**Alphonse Gachoka Kinyanjui**” did participate in the proceedings and is on record as having informed the Msambweni Land Disputes Tribunal he had sold the land to the applicant. The applicant himself was not present at that hearing. It is not indicated whether he was served and himself declined to appear. This is quite evident that the applicant was not awarded an opportunity to be heard as he has claimed.

The Kwale Land Registrar proceeded to amend and/or rectify the Register in compliance with the Msambweni Land Disputes Tribunal. The duties of the Land Registrar under the land registration Act is a public duty and is amenable to scrutiny from the High Court under its powers of Judicial Review. Section 80 of the Land Registration Act gives a court the power to direct rectification of the Registrar in cases where the courts is satisfied that entries were made due to fraud and/or mistake.

The recommendations made by the Msambweni Land Disputes Tribunal in respect to the suit plot were (as I have found) made on the basis of a mistake regarding the jurisdiction of the Msambweni Land Disputes Tribunal. As such the court has the requisite authority to direct the appropriate rectification of the register. I am therefore satisfied that the present application has merit. I do therefore allow the orders sought in the Notice of Motion dated 15-6-2009 in terms of prayers (1) and (3). I note that prayers (2) has been overtaken by events and I make no orders in regard to that prayer.

Cost of this application are hereby awarded to the applicant. It is so ordered.

Dated and Delivered in Mombasa this **9th** day of **October, 2014**.

M. ODERO

JUDGE

9/10/2014

In the presence of:

Mr. Ngare h/b for Ms Kiti for the Respondent

No appearance by Applicants.

M. ODERO

JUDGE

9/10/2014