



REPUBLIC OF KENYA

High Court at Machakos

Miscellaneous Civil Application 88 of 2002

ONESMUS NDOLO NGETA PLAINTIFF/APPLICANT

VERSUS

1. MACHAKOS LAND DISPUTES TRIBUNAL

2. MACHAKOS SENIOR PRINCIPAL

MAGISTRATE'S COURT DEFENDANTS/RESPONDENTS

RULING

The **amended Notice of Motion** dated 18/10/2012 is brought under **Order 53 Rules 3 (1) and Order 8 Rule 3 of the Civil Procedure Rules and Section 8 & 9 of the Law Reform Act (Cap 26) Laws of Kenya.**

The *ex parte* Applicant (hereinafter Applicant), **Onesmus Ndolo Ngeta** has applied for an order of *certiorari* to remove to the High Court and quash the proceedings and undated award of the **Machakos Land Disputes Tribunal** read out in the **Machakos Senior Principal Magistrate's Court** on 17/5/2002 and all subsequent proceedings and orders before the said subordinate court.

The Applicant herein was the Respondent in the **Machakos Land Disputes Tribunal Case No. 5/99**. The Interested Party **Pius Musimba Muasya** was amongst the four claimants before the Tribunal. The case before the Tribunal was in respect of land parcel No. **Kangundo/Kitwii/1313**. The six member Tribunal after hearing the case made the following decision, *inter alia*:-

“This tribunal court has awarded the land in dispute to the four complainants in accordance with the findings. This tribunal appeals to the high court judge to revoke the title deed No. Kangundo/Kitwii/1313.....”

The parties were given 30 days within which to appeal if not satisfied. The Applicant was aggrieved by the Tribunal's decision hence the present application.

The gist of the Applicant's complaint according to the statement of facts and affidavits filed is that the Tribunal had no jurisdiction to entertain a claim relating to title to land. That the Tribunal was improperly constituted as the dispute was heard by six members. The Tribunal was also castigated for not conducting its proceedings in a procedural manner, entertaining a claim involving some deceased litigants and entertaining claimants with no *locus standi*.

The Respondent filed grounds of opposition which termed the Notice of Motion as defective and not merited and statute time barred.

The Interested Party filed a reply to the application pursuant to leave granted by the court on 22/10/08. The Interested Party, **Pius Musimba** deponed in his affidavit sworn on 5/12/11 that the Tribunal decision made on 4/9/2001 gave the parties 30 days within which to appeal. The Interested Party supported the decision of the Tribunal.

The firm of **Anne M Kiusya Advocates** appeared for the Applicant. The **Attorney General** appeared for the Respondents while the firm of **B.M. Mung'ata Advocates** appeared for the Interested Party. The counsel for the Applicants and for the Interested Parties canvassed the application by way of written submissions which I have duly considered.

As stated earlier on in this ruling, the Applicant has faulted the Tribunal's decision on several grounds.

The Tribunal's mandate is provided for under **Section 3 (1)** of the **Land Disputes Tribunal Act No. 18 of 1990** which stipulates as follows:-

“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.”

The Tribunal therefore had no jurisdiction to entertain a claim relating to title to land. Jurisdiction is everything. Without it a court/Tribunal cannot make a single step. I therefore need not interrogate the other issues relating to the composition of the Tribunal’s or whether the Tribunal’s proceedings were carried out in a procedural manner or not. The Notice of Motion seeks to quash the **“undated award”** of the Tribunal read out in the **“Machakos SPMCC on 17/5/2002 and all subsequent proceedings and orders before the said subordinate court”**.

I have perused the Tribunal’s proceedings. The hearing commenced on 4/9/2001 in the presence of the Applicant, **Onesmus Ndolo Ngeta** who was the Respondent therein and the proceedings were carried out between 11.00 a.m. and 4.10 p.m. and the decision of the Tribunal made within the same day and parties given 30 days within which to appeal.

It is therefore clear from the record that the decision of the Tribunal was made on 4/9/2001. It is not clear from the proceedings of the Tribunal whether the Applicant as one of the affected persons was served with the decision of the Tribunal to enable him to appeal if he so wished. The award of the Tribunal was filed in Machakos SPMCC Misc. Application **“No. 13 of 2002”** in an entry reflected as carried out on **“17/5/2001”** **G.W. Ngenye, DM II** made the following orders:-

“Award read to the parties and the same confirmed as judgment of court.”

There are errors apparent on the record regarding whether the award was adopted by the court on 17/5 2001 or 17/5/2002. The Tribunal’s hearing was conducted on 4/9/2001. Consequently, the award could not have been adopted as a judgment of the court on 17/5/2001! The correct year of the adoption must therefore be year 2002. The Tribunal’s award was filed in court in year 2002.

The application was therefore made within the time provided for by the law. The orders dated 17/5/2002 are the clearest indication that the parties were notified of the award when it was read to them in court.

With the foregoing, I allow the application. Each party to meet own costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this **2nd** day of **May** 2013.

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B. THURANIRA JADEN

JUDGE