



REPUBLIC OF KENYA

IN THE HIGH COURT AT MALINDI

MISCELLANEOUS CIVIL APPLICATION JR. NO. 30 OF 2011

REPUBLICAPPLICANT

AND

FARES MICHAEL JILOEX-PARTE APPLICANT

VERSUS

**CHAIRMAN OF THE GALOLE LAND DISPUTES
TRIBUNAL (Mr. Japhet**

Zachariah Kasse)1ST RESPONDENT

RESIDENT MAGISTRATE, HOLA.....2ND RESPONDENT

AZARIA BUYA through

AMON PETERO BUYAINTERESTED PARTY

JUDGMENT

1. Pursuant to leave granted on 1st November, 2011, the exparte applicant filed Judicial Review Proceedings on 23rd November, 2011, seeking an order of prohibition against the 2nd Respondent and certiorari to remove to the High Court and quash the award of 1st Respondent concerning the dispute between him and the Interested Party.
2. The exparte Applicant swore an affidavit in support of his 8 grounds key among them being grounds 2, 3, 4, 5 which are in the following terms:

“2. THAT during the hearing of the tribunal case, the chairman disqualified himself and no further proceedings took place.
3. **THAT the ex-parte applicant was served with a hearing notice to attend the tribunal for a hearing on the 5th day of October, 2011 when no seating took place.**
4. **THAT exparte applicant was again informed to attend the tribunal on the 11th day of October, 2011 for a further hearing when again there was no seating.**
5. **THAT the tribunal decided to terminate its proceedings and proceeded to write its award before taking all our evidence.”**

3. The dispute between the parties involved the boundary of their contiguous land parcels. Basically, the ex parte applicant complains that he was not given a hearing by the Tribunal in its attempt to determine the correct boundaries. He claims that the 1st Respondent (chair) disqualified himself and no proceedings took place thereafter, despite an invitation sent to the ex parte applicant to attend the Land Disputes Tribunal on 11th October, 2011. He argues that the award pronounced is irregular and should be quashed.
4. The 1st Respondent through the Attorney General opposed the proceedings describing them as incompetent for failure by the applicant to annexe the impugned proceedings or order. For his part, the Interested Party filed a Replying Affidavit asserting, inter alia, that the ex-parte applicant participated in the proceedings. Attached to the affidavit was annexure "AP-1" being a copy of the proceedings and decision of the Galole Land Disputes Tribunal.
5. The parties argued the application before me on 7th November, 2012 and judgment was initially set for February, 2013. However, it was not delivered due to the calendar of the Judges and Magistrates Vetting Board before which the judge had to appear. Later the court was taken up with election petitions. The delay is regretted.
6. Having considered the material placed before me in respect of the main Notice of Motion, I take the following view.
7. The ex parte applicant has made several claims of irregularity concerning the proceedings of the 1st Respondent. However, as pointed out by the Hon. Attorney General, the applicant did not annexe a copy of the Land Disputes Tribunal proceedings or the award to his application. His allegations that no proceedings took place or that he was not heard are totally displaced by the annexure "AP-1" to the replying affidavit. The said annexure is a copy of the proceedings and decision of the Land Disputes Tribunal. The ex parte applicant clearly participated in the said proceedings by asking questions of the witnesses called by the Interested Party and calling his own witnesses. There is no record that any person resigned as chair to the proceedings. Eventually, a decision was rendered.
8. For these reasons, the ex parte applicant's complaint that he was denied a hearing before the Land Disputes Tribunal cannot stand. This dispute started in 1969. It would seem that the ex-parte applicant is intent on keeping it going even while offering no material justification. The present proceedings border on abuse of the court process. The Notice of Motion filed on 23rd November, 2011 is dismissed with costs.

Delivered and signed at Malindi on this **11th** day of **November, 2013** in the presence of Mr. Shujaa for the Interested Party.

Court clerk – Samwel.

C. W. Meoli

JUDGE