



REPUBLIC.....APPLICANT

VERSUS

MACHAKOS LANDS DISPUTES TRIBUNAL.....RESPONDENT

AND

1. PETER MUNYAO MUENDO

2. BENEDICT MUNYAO MUENDO.....INTERESTED PARTIES

AND

EX PARTE

1. KATULA KANG’OO

2. JOAN MATHAU KING’OO

3. MULI KING’OO

RULING

On 1st July 2009, parties to this Judicial Review Application were directed by **Lenaola,J** to canvass the substantive Notice of Motion by way of written submissions. It would appear that only the applicants complied with that directive since they filed their written submissions on 1st September, 2009. Soon thereafter **Lenaola,J** left the station on transfer. The case then went cold until 24th April, 2012 when it was resurrected before me. On that day parties sought for directions on the way forward. They were all however keen on having the application proceed from where **Lenaola,J** had stopped. Since the interested parties had not filed their respective written submissions they pleaded with me to give them a chance to do so. I acceded to their request. Consequently, they filed their submissions on 17th May, 2012.

I have since read the rival submissions on record and the authorities cited. The genesis of this dispute is the complaint lodged by the interested parties before the ^t respondent. The subject of the dispute was land parcel **Kibauni/Kilala/170** “*the suit premises*” The interested parties wanted the suit premises subdivided equally between them and the applicants. The applicants would hear none of the above.

The respondent having heard both sides ruled thus-

“BACKGROUND FACTS –

The disputed plot was an ancestral land belonging to Muendo Ndaka

ISSUES SUMMARIZED-

The claimant want the plot No. 170 be subdivided between the claimants and the objectors, but the objectors deny.

FINDINGS, DISCUSSIONS, DETERMINATION AND REASONS

The tribunal found out that there is a permanent boundary which was put in 1996 by wazees before survey- Tama, Kali and James Mbindyo. There was land case at Tawa, Uaani and the court ruled as per common boundary set by wazees.

The father of the claimants settled in this land before and after 1966. And when he passed away he was buried there and his wife.

The tribunal also learnt that the claimants have lived in this plot for more than 40 years and have no other existing plot as claimed by the objectors.

When the survey came the objectors secretly brought the surveyors in absence of the claimants and committee elders and surveyed plot no. 170 including the claimants land.

On visiting site the tribunal found each party using its own portion with claimants having permanent buildings.

DECISION DETERMINATION OF TRIBUNAL

The District Land Registrar Machakos is hereby ordered to deregister plot No. 170 from Katula King'oo and make a fresh subdivision following the common boundary made in 1966 by the elder's between Katula King'oo and the claimants- Peter Munyao Muendo and his brothers.

Costs award

Case worn with cost".

The award was subsequently filed with the Chief Magistrate's Court at Machakos and adopted as a judgment of the court on 5th December, 2007. Aggrieved by the turn of events, the applicants moved to this court on 17th January, 2008 by way of Judicial Review proceedings seeking leave for orders of *certiorari* to quash the proceedings and the award and any other subsequent proceedings thereto. They also prayed that leave so granted do operate as stay. Finally, they prayed that costs of the proceedings be provided for.

Lenaola, J on 7th January, 2008 heard the application *ex parte* and granted leave. He also directed that leave so granted do operate as stay. He further directed that the substantive motion be filed within 15 days failure to which the order for stay would lapse. Within no time, the substantive motion was filed.

In response to the motion, the interested parties stated that the suit premises were family ancestral land. The applicant, **Katula King'oo** was a wife of their maternal uncle and held the title to the suit premises in trust for the 2nd interested party and on behalf of the other family members. The suit premises had been acquired by their paternal grandfather, **Ndaka Nzavi**, deceased. Whereas the applicants used one part of the suit premises, the 2nd interested party, his mother and 5 brothers used the other portion. The suit premises were subdivided by elders and sisal boundary planted in the year 1966 between the interested parties portion and that of the applicants'. Otherwise, the 1st respondent had jurisdiction to hear the dispute as it related to a claim to occupy or work on land. The respondent did not respond to the application.

The determination of these proceedings will not turn on the merits but rather on a technicality. However, it is not minor technicality that can be ignored in terms of the articles in our current constitution. The omission is fatal to the application as it goes to the root and of jurisdiction.

It is common ground that the Chief Magistrate's Court Machakos has not been made a party to these proceedings. It is common ground that the award by Machakos District Tribunal was subsequently filed in the Chief Magistrate's Court at Machakos. Thereafter it was read and adopted as a judgment of that court. That having happened, the award ceased to have a life of its own, capable of being quashed. As **Khamoni, J** correctly pointed out in **Wamwea vs Catholic Diocese of Muranga Registered Trustee [2003] KLR 389-**

“any decision of the Tribunal or appeals committee adopted by the magistrate's Court in accordance with the provisions of Land Disputes Tribunal Act becomes a decision of the magistrate's court and ceases to exist as separate entity challengeable alone...”

In the premises, failure by the applicants to enjoin the Chief Magistrate's Court at Machakos as a party to these proceedings was fatal. The award is now in the domain of the said court and if an order of *certiorari* was to issue, it would have to be directed at the court and not the respondent.

It is on this account that I find the application undeserving. It is accordingly dismissed with costs to the interested parties.

RULING DATED, SIGNED and DELIVERED at MACHAKOS his 6TH day JULY, 2012.

ASIKE -MAKHANDIA

JUDGE