



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**Miscellaneous Application 169 of 2006**

**IN THE MATTER OF AN APPLICATION BY MWAULA MBINDYO KILOVE FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF THE DECISION OF THE CHAIRMAN MACHAKOS LAND DISPUTES TRIBUNAL AND THE JUDGMENT OF THE CHIEF MAGISTRATE AT MACHAKOS LAW COURT**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**1. THE CHAIRMAN MACHAKOS DISTRICT LAND DISPUTES TRIBUNAL**

**2. THE CHIEF MAGISTRATE MACHAKOS LAW COURTS ..... RESPONDENTS**

**AND**

**NDAMBUKI KISIVII MBINDYO ..... INTERESTED PARTY**

**PAUL MBINDYO KILOVE ..... EXPARTE APPLICANT**

**R U L I N G**

Before me is an application by way of Amended Notice of Motion dated 2<sup>nd</sup> October 2006 and amended on 1<sup>st</sup> August 2008 filed on behalf of the *ex-parte* applicant Mwaula Mbindyo Kilove. The respondents are the Chairman Machakos District Land Disputes Tribunal, and the Chief Magistrate Machakos Law Courts. There is an Interested Party named as Ndambuki Kisivii Mbindyo. The prayers in the application are that:-

- 1. The application be certified as urgent and be heard immediately.**
- 2. That an order of certiorari issue removing into the High Court for purposes of quashing and setting aside proceedings and award made by Machakos District Land Disputes Tribunal in Case**

**No. 44 of 2004 at Machakos on 26/9/05 which was forwarded and read to the Interested Party and applicant in the Chief Magistrate's Court at Machakos on 30/8/06 in Miscellaneous Case No. 81 of 2006.**

**3. An order of prohibition do issue to the respondents and Interested Party prohibiting them from implementing the said award of the Machakos District Land Disputes Tribunal Case NO. 44 of 2004 which was read and entered as judgment by the Machakos Chief Magistrate's Court on 30/8/06 in Miscellaneous Case NO. 81 of 2006.**

**4. The leave granted to apply for the above orders of certiorari and prohibition do operate as a stay of execution of the award of the Machakos District Land Disputes Tribunal Case NO. 44 of 2004 which was read and entered as judgment by the Machakos Chief Magistrate's Court on 30/8/06 until determination of the substantive application for the said orders.**

**5. The respondents and Interested Party do pay costs of the application.**

Needless to say, prayer 1 and 4 of the Notice of Motion have already been spent.

Neither the respondents nor the Interested Party filed any response to the application. The *ex parte* applicants' advocate filed written submissions. On the hearing date, Mr Ndungi who held brief for Mr Sila for the Interested Party stated that Mr Sila did not wish to file written submissions. Counsel did not make any oral submissions. Mrs Nzau for the *ex parte* applicant made brief oral submissions in support of the written submissions filed by Ms Katunga & Company Advocates. Counsel emphasized that the jurisdiction of the Land Disputes Tribunal was defined under Section 3 of the Land Disputes Tribunal Act No. 18 of 1990. Counsel submitted that, infact, the subject matter had already been dealt with by the Land Disputes Tribunal, and gone upto the Ministerial level and determined. In counsel's view, it was improper for the Tribunal to deal with the matter again.

This application is unopposed. It was stated by the *ex parte* applicant in the written submissions as follows:-

**"The Tribunal's jurisdiction is found on Section 3 of the Land Disputes Tribunal Act. The Tribunal overstepped its mandate thus the decision must be quashed.**

**More so the suit premises had a Title Deed being KIBAUNI/ITUMBELE/360 in the name of the *ex parte* applicant which had emanated from plot No. 78 which was a subject matter of the Machakos District Land Dispute Tribunal Case NO. IME/2/79 which proceeded up to ministerial level.**

**That despite warning by the Machakos District Commissioner, that the Tribunal had no powers nor jurisdiction to handle the case, it went ahead with the matter in breach of the law. (Annexed is a copy of the warning letter marked EX3)."**

The above is not disputed. The appeals procedure from the decisions of the Land Disputes Tribunals, is provided under Section 9 of the Act. Since it is not disputed that an appeal on the same subject matter was filed and determined, then the Tribunal had no business in entertaining the same dispute again. In doing so, the Tribunal was acting illegally and in abuse of power. An illegality is a nullity and it so remains. Therefore the purported decision of the Tribunal herein being an illegality, has to be quashed. The adoption of the decision by the subordinate court is also invalid and has to be quashed. The prayer for prohibition is also justified as the Tribunal appears bent on acting contrary to the law. It should be prevented from so acting.

For the above reasons, I allow the amended application and grant prayers 2 and 3. The costs will be to the applicant from the Interested Party and the respondents jointly and severally.

It is so ordered.

Dated and delivered at Machakos this **9<sup>th</sup>** day of **October** 2012.

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**George Dulu**

**Judge**

**In the presence of:**

Mrs Nzau for ex parte Applicants

N/A for Interested Party

N/A for Respondent

Nyalo – Court clerk