



REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 45 of 2011

**IN THE MATTER OF MISC. APPL. NO. 25 OF 2002 IN THE SENIOR RESIDENT
MAGISTRATE'S COURT AT VIHIGA**

AND

**IN THE MATTER OF THE TIRIKI WEST LAND DISPUTES TRIBUNAL PROCEEDINGS
OVER LAND PARCEL KNOWN AS TIRIKI/SELENDE/160**

BETWEEN

AN APPLICATION BY RODGERS INZECHEO APPLICANT

VERSUS

ZAKARIA MUKHAVALA 1ST RESPONDENT

AND

MUSA KEYA ASHISALA 2ND RESPONDENT

R U L I N G

The application by way of Notice of Motion dated 1.9.2011 seeks the following orders:-

“1. The Honourable Court do find that the proceedings before Tiriki East Land

Disputes Tribunal involving dispute between the respondents and the applicant over land parcel known as TIRIKI/SELENDE/160 was before a body without the necessary jurisdiction to entertain the dispute and or make the award or decision made and do declare that the said award or decision of the land tribunal over the said land was null and void and of no legal effect.

2. This Honourable Court do find that all the proceedings entered into by the Senior Resident Magistrate Vihiga in Miscellaneous Application No. 25 of 2001 being premised on the award or decision of the Tiriki East Land Disputes Tribunal over parcel known as TIRIKI/SELENDE/160 are null and void and so declare.

3. This Honourable Court do find that the applicant is the bona fide absolute proprietor of land parcel known as TIRIKI/SELENDE/160 and do declare so.

4. This Honourable court do declare that the respondents occupation of land parcel known as TIRIKI/SELENDE/160 is in violation of the applicants proprietary rights to the said land and the respondents are guilty of illegal encroachment of the said property and are in law bound to hand over vacant possession immediately of the same to the applicant or be liable to eviction by the applicant and this court so declares.

5. The applicant is entitled to recover mesne profits for the period the respondents have remained in occupation and or use of the said and this court so finds and so declared.

6. The costs of this application be paid by the respondents.”

The application is supported by the affidavit of the applicant, RODGERS INZECHERO sworn on 18.9.11. In the said affidavit, it is the applicant’s stand that he is the registered owner of L.P. NO. TIRIKI.SENENDE/160. That in the year 2002, the respondents commended a claim before the Tiriki East Land Disputes Tribunal claiming to have bought a portion of the said land. The Tribunal ruled in favour of the Respondents. The award of the Tribunal was adopted by the Vihiga SRM’s court in Misc. Appl. No. 25 of 2002. That is when the respondents moved into the said portion of land and occupied the same.

It is the applicant’s case is that he has suffered injustice for the following reasons:-

“(a) The claim by the respondents to the suit land was legally baseless as the sale was not in writing as required by the law and no agreement was produced to the tribunal.

(b) No consent of the Land Control Board was sought or obtained over the transaction if ever it was entered.

(c) The composition of the tribunal under the law is three members but four members sat to make the decision.

(d) The decision of the tribunal must be dated but the one in issue was never dated.

(e) The tribunal had no authority under the law to order a refund of Kshs.40,000/= to the respondents.

(f) The tribunal had no power to order my land to be transferred to the respondents or other person as it did.

(g) The conduct of the court adopting the award was such that it did not act openly or transparently and was biased in favour of the respondents.

(h) The Vihiga S.R.M. Court ought not have adopted the tribunal award which was vague and incapable of executions.”

The application is opposed to as per the replying affidavit sworn on 20.2.12 by the 1st respondent, ZAKARIA MUKHAVALI. According to the 1st respondent, he bought the portion of land in question in the year 2000 and proceeded to occupy the same. That he lodged a claim before the Tiriki East Land Disputes Tribunal and the award of the Tribunal was adopted by the Vihiga SRM’s court and a decree issued. That the applicant did not appeal against the decision by the Tribunal nor against the orders made by the Vihiga SRM’s court.

Mr. Musiega advocate appeared for the applicant while Mr. Lugadiru advocate appeared for the respondents. Both parties filed written submissions which this court has duly considered.

It is not in dispute that the applicant holds the title to the land in question. It is also not in dispute that the Tiriki East Land Disputes Tribunal made an award which was adopted by the Vihiga SRM’s court in Misc. Appl. No. 25 of 2002.

The decree issued by the Vihiga SRM's court read as follows:-

“(1) That the Tiriki Division Land Dispute Tribunal Award in respect of land parcel No. KAKAMEGA/SELENDE/160 is hereby adopted as the judgment of the Honourable Court.

(2) That Mchwanda's family, his son Inzechero and his grand children do return the Kshs.40,000/= to the applicant or in the alternative the said piece of land be jointly registered in the names of the applicants and the respondent DAVID MCHWANDA.

(3) That whoever is not satisfied with the said verdict has 30 days within which to appeal.”

This decree was issued almost ten years ago. The applicant has not given any reasons why he did not appeal against the said decree or take appropriate steps to have the same quashed. That is where the applicant ought to have gone to raise the issue of the Tribunal's jurisdiction or any issues related to the adoption of the award.

The same applicant in orders by the Vihiga SRM's court (annexure “ZM.2”) directing the Executive Officer of the court to sign the relevant documents to enable the respondents herein to get their portion of the land.

Article 159 (2) (d) and 165 (6) and (7) of the Constitution of Kenya is not an open ended invitation for the re-opening of long settled disputes. Litigation must at the point come to an end. The application has no merits and is dismissed with costs.

Delivered, dated and signed at Kakamega this 4th day of October, 2012

B. THURANIRA JADEN

J U D G E