



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. MISC. APPLN. NO. 52 OF 2004 (J.R)**

**REPUBLIC.....APPLICANT**

**VERSUS**

**LAND DISPUTES TRIBUNAL**

**CHAIRMAN, KANGUNDO DIVISION.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**AND**

**PETER MUTUKU**

**JOHNBOSCO MUTUKU**

**ELINAH MUTUKU.....INTENDED INTERESTED PARTIES**

**AND**

**FRANCIS MUTUKU WAMBUA.....INTERESTED PARTY**

**AND**

**PHILIP KIETI KITONYI**

**MULI NZIOKA .....EX-PARTE APPLICANTS**

**JUDGMENT**

1. In the Notice of Motion dated 25<sup>th</sup> June, 2004, the Ex-parte Applicants are seeking for the following orders for Judicial Review:

***a. That the award/decision of the Land Disputes Tribunal Kangundo read to parties on 22<sup>nd</sup> April, 2003 and the orders/decree of the court made on 16<sup>th</sup> January, 2004 be declared null and void and be removed and brought forth for purposes of being quashed and set aside.***

***b. That costs of this Application be provided for.***

2. The Motion is premised on the Applicants' Statement of Facts dated 29<sup>th</sup> March, 2004. In the said Statement of Facts, the Applicants averred that they were wrongly sued before the Tribunal by the Interested Party as they were neither the registered owners of Kangundo/Isinga/1946 neither were they the administrators of the Estates of the registered proprietors of the said land.

3. The Applicants further averred that the Tribunal lacked jurisdiction to determine the issue of ownership of the suit land; that the Tribunal acted in breach of the rules of natural justice and that the Award of the Tribunal should be quashed by the court.

4. The Respondents filed Grounds of Opposition in which they averred that the Applicants did not seek leave to institute these proceedings and that the Application does not contain the alleged facts but the same are contained in a worthless Statement.

5. The Interested Party filed a Notice of Preliminary Objection in which he stated that the Application is incurably defective because it does not mention the date when leave was granted.

6. In his submissions, the Applicants' advocate submitted that the court should be guided by the provisions of Article 159(2) (d) of the Constitution; that justice should be administered without undue regard to procedural technicalities and that the Tribunal did not have the requisite jurisdiction to handle the dispute herein. The Respondents and the Interested Party did not file submissions.

7. The Notice of Motion dated 25<sup>th</sup> June 2004 and filed on the same day is seeking for Judicial Review orders of certiorari to quash the decision of the Kangundo Land Disputes Tribunal delivered on 22<sup>nd</sup> April, 2003. The said Motion was filed pursuant to the provisions of the then Order LIII Rule 3(1), (2) and (3) of the Civil Procedure Rules.

8. On the same day the Notice of Motion was filed, the Applicants also filed the Statement of Facts. Before filing the Notice of Motion on 25<sup>th</sup> June, 2004 together with the Statement of Facts, the Applicant filed the Chamber Summons dated 29<sup>th</sup> March, 2004 in which they sought for leave to apply for orders of Judicial Review. The Chamber Summons was filed pursuant to the provisions of the then Order LIII Rules 1. Annexed on the Chamber Summons is the Verifying Affidavit and the Statement of Facts.

9. I have perused the entire file and noted that the Chamber Summons dated 29<sup>th</sup> March, 2004 was allowed by the court on 7<sup>th</sup> June, 2004. The court then directed the Applicants to file the substantive Notice of Motion within twenty one (21) days. Indeed, the Notice of Motion which is currently before the court was filed within the requisite period of twenty one (21) days. The issue of the Applicant having not obtained the leave of the court before filing the Notice of Motion dated 25<sup>th</sup> June, 2004 as argued by the Respondents does not therefore arise.

10. It is not in dispute that the Kangundo Land Disputes Tribunal heard the dispute between the Ex-parte Applicants herein and the Interested Party. According to the proceedings, the Interested Party is the one who sued the two Ex-Parte Applicants. The subject matter before the Tribunal was a parcel of land known as Kangundo/Isinga/1946.

11. After hearing the Ex-parte Applicants (*Defendants*) and the Interested Party (*Plaintiff*), the Tribunal made the following Award:

***“1. The land parcel no. KDO/151/1946 be revoked to allow the Plaintiff (the Interested Party) get his Title Deed.***

***2. The accused No. 1 to meet the court expenses incurred by the Plaintiff.”***

12. The Interested Party has not denied that by the time the Tribunal heard the dispute, parcel of land known as Kangundo/Isinga/1946 was registered in the names of Nzyoka Mutua, Musembi Mutua and Nzomo Mutua as proprietors in common in equal share. According to the official search, the said registration was done on 3<sup>rd</sup> March, 1978.

13. The jurisdiction of the Land Disputes Tribunals was donated to them by Section 3(1) of the Land Disputes Tribunals (*repealed*) which provided as follows:

***“3. (1) 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.”***

14. It is obvious that the Tribunal did not have the jurisdiction to deal with the issue of ownership of land, especially land that was already registered. The Tribunal had no legal mandate to order for the sub-division of parcel of land known as Kangundo/Isinga/1946 which was registered in the names of Nzyoka, Musembi and Nzomo who were not even made parties to the dispute.

15. Considering that under the Registered Land Act (*repealed*), it is only the court that was mandated to nullify a Title Deed, or cancel any entry in the register, I find that the Tribunal acted *ultra vires*. Consequently, the decision that they made on 22<sup>nd</sup> April, 2003 was a nullity.

16. For those reasons, I allow the Ex-parte Applicants' Notice of Motion dated 25<sup>th</sup> June, 2004 as follows:

***a. The Award/decision of the Land Disputes Tribunal Kangundo read to parties on 22<sup>nd</sup> April, 2003 and the orders/decree of the court made on 16<sup>th</sup> January, 2004 in respect of parcel of land known as Kangundo/Isinga/1946 be and is hereby declared null and void.***

***b. Each party to bear his own costs.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 4<sup>TH</sup> DAY OF OCTOBER, 2019.**

O.A. ANGOTE

JUDGE