



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

MISC. CIVIL APPL. NO. 265 OF 2008

FRANCIS MUSYOKI KATUMO.....APPLICANT

VERSUS

THE CHAIRMAN CENTRAL DIVISION LANDS DISPUTE TRIBUNAL.....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

AND

MBIINZI NDETO.....INTERESTED PARTY

JUDGMENT

1. In the Notice of Motion dated 18th February, 2009, the Ex-parte Applicant is seeking for the following reliefs:

a. That certiorari do issue to remove to the High Court and quash the decision, proceedings and award of Central Division Lands Dispute Tribunal made on 27th October, 2008 in its case Number 29 of 2007 which was read and adopted as the judgment of the Machakos Court on 2nd December, 2008 in Machakos Senior Resident Magistrate Court Land Case Number 159 of 2008.

b. That an order of prohibition do issue to prohibit further steps in enforcing the said decision, or the judgment, decree or order which may result.

c. That the costs of this Application be borne by the Respondents and the Interested Party jointly or severally.

2. The Application is premised on the Statement of the Applicant in which he averred that he is the absolute registered owner of parcel of land known as Muputi/Kiima – Kimwe/928; that in the year 2007, the 1st Respondent wrongfully and without jurisdiction conducted proceedings and purported to revert part of Plot No. 928 to plot number 920 and that the 1st Respondent's conduct was unlawful. The Respondents and the Interested Party did not file any response to the Application.

3. In his submissions, the Applicant's advocate submitted that the decision of the 1st Respondent of 27th October, 2008 was *ultra vires*, arbitrary and in excess of jurisdiction. Counsel submitted that the dispute between the Applicant and the Interested Party was not a dispute envisaged by Section 3(1) of the Land Disputes Tribunal Act and that the Tribunal did not have jurisdiction to make any determination as to the

title to land.

4. On behalf of the Respondents, the Attorney General submitted that indeed the Tribunal lacked jurisdiction to determine the matter of title and should have referred the issue to the High Court.

5. The Attorney General, on behalf of the 1st Respondent has admitted in his submissions that the 1st Respondent did not have the jurisdiction to make the decision of 27th October, 2008.

6. It is not in dispute that parcel of land numbers Muputi/Kiima-Kimwe/928 and 920 are registered under the Registered Land Act (*repealed*).

7. It is also not in dispute that on 27th October, 2008, the 1st Respondent delivered its decision in the following terms;

“The disputed area should revert to parcel no. Muputi/Kiima-Kimwe/920 and the Land Registrar Machakos should effect the change.”

8. As correctly submitted by both the Applicant’s advocate and the Attorney General, the 1st Respondent did not have jurisdiction to order for the rectification of the register in respect of plots No. 920 and 928 in the manner it did. It is only this court that has the mandate to make such an order (*See Section 143 (1) of the Registered Land Act (repealed)*).

9. For those reasons, I allow the Notice of Motion dated 18th February, 2009 in terms of prayer numbers 1, 2 and 3.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017

OSCAR A. ANGOTE

JUDGE