



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

MISC. APPLICATION NO. 23 OF 2008

**IN THE MATTER OF AN APPLICATION BY PAUL NDAMBUKI MULINGE TO APPLY FOR
AN ORDER OF PROHIBITION**

PAUL NDAMBUKI MULINGE.....EX-PARTE

AGAINST

THE CHAIR MACHAKOS DISTRICT LAND TRIBUNAL1ST RESPONDENT

THE CHIEF MAGISTRATE MACHAKOS LAW COURT.....2ND RESPONDENT

AND

DANIEL MUTINDA MULUINTERESTED PARTY

JUDGMENT

1. In the Notice of Motion dated 5th March, 2008, the Ex-parte Applicant is seeking for the following orders:

a. That an order of certiorari do issue removing into the High Court for purposes of quashing and setting aside the judgment adopted by the Chief Magistrate's Court at Machakos on 30th November, 2007 in Miscellaneous Application No. 107 of 2006.

b. That 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 in Case No. 51 of 2004 which was read and adopted as Judgment by the Chief Magistrate Machakos Law Courts on 30th November, 2007 in Miscellaneous Application No. 107 of 2006.

c. That the leave granted to apply the above orders of certiorari and prohibition do operate as stay of execution of the judgment adopted by the Machakos Chief Magistrate's Court on 30th November, 2007 in Miscellaneous Application No. 107 of 2006 pending the hearing and determination of the substantive Application(spent).

2. According to the Statement of the Applicant, he is the registered proprietor of parcel of land known as Kibauni/Kitile/371; that the Interested Party never challenged the decision of the Minister in Case No. KTL/2/75 and that the Tribunal's proceedings and findings in Case No. 51 of 2004 is a nullity in law for want of jurisdiction.

3. In the Affidavit, the Applicant deponed that all along, he was not aware of the award of 17th May, 2006

until on 30th November, 2007 when the decision was adopted by the Magistrate's Court.

4. Although the Respondent's and the Interested Party were served with the Notice of Motion, they did not file a response.

5. The Ex-parte Applicant's advocate submitted that the Tribunal did not have jurisdiction to deal with the issue of ownership of land; that the suit property has a Title Deed and that the subject matter that was before the Tribunal had been litigated before the Minister.

6. According to the Award of the Machakos Disputes Land Tribunal of 17th May, 2006, parcel of land number 371 should be divided between the Applicant and the Interested Party.

7. The evidence on record shows that before the Tribunal delved into the issue of ownership of parcel number 371, the same issue had been raised before the Lands Committee, the Land Arbitration Board and the Minister pursuant to the provisions of the Land Adjudication Act.

8. According to the decision of the Minister that was made on 29th May, 1986, it is the Ex-parte Applicant who was entitled to the suit property.

9. Considering that there was no appeal against the decision of the Minister, it was not open for the Tribunal to delve into the issue of ownership of the suit property, the issue of ownership having been dealt with by the Minister. The Tribunal therefore acted without jurisdiction and its decision is null and void.

10. Considering that the Application for leave to commence these proceedings was filed after the expiry of six (6) months from the date when the Tribunal made the award, the order of certiorari cannot issue.

11. However, the order of prohibition to prohibit the implementation of the impugned Award should issue.

12. For those reasons, I allow the Notice of Motion dated 5th March, 2008 in terms of prayer number (c). The Interested Party shall pay the costs of the suit.

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

OSCAR A. ANGOTE

JUDGE