



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. MISC. APPLN. NO. 182 OF 2014

REPUBLICAPPLICANT

VERSUS

THE CHAIRMAN MACHAKOS DISTRICT LAND

DISPUTES TRIBUNAL.....RESPONDENT

AND

MAKUSYAA WOMEN GROUP.....INTERESTED PARTY

1. NANCY KAMENE MAINGI

2. ZILPHA MONYANGI ACHOKI] EXPARTE APPLICANTS

JUDGMENT

1. In the Notice of Motion dated 1st December, 2014, the Ex-parte Applicants have prayed for the following orders:

a. That an order of certiorari do issue to remove into this Honourable Court for purposes of being quashed the proceedings and decision of Machakos District-Athi River Division Land Disputes Tribunal Case No. 72 of 2008 dated 13th August, 2008 read to parties on 26th September, 2014 in Misc. Civil Application No. 108 of 2008 in the Chief Magistrate's Court Machakos.

b. That an order of mandamus do issue directing the Machakos District Land Registrar to cancel the registration of Mavoko Municipality Block 6/179 in favour of Teresia Kasiva Mutuku, Elizabeth Kavinya Mutua and Pauline Mwendu Peter trustees of Makusyaa Women Group and instead restore the names of the Applicants Nancy Kamene Maingi and Zilpha Monyangi Achoki the rightful owners.

c. That costs of the Application be provided for.

2. The Application is premised on the grounds that the Respondent acted *ultra vires* its jurisdiction in that it proceeded to determine a dispute touching on ownership and title to parcel of land known as Mavoko Municipality Block 6/179; that the Respondent contravened the rules of natural justice and proceeded to condemn the Applicants unheard and that the Respondent acted in excess of its mandate.

3. In response, the Interested Party filed a Notice of Preliminary Objection in which it averred that the suit is time barred; that the orders that the Applicant is seeking to review were issued in the year 2008 and that the suit is sub judice Machakos High Court Civil Case No. 16 of 2011.
4. In her Replying Affidavit, the Interested Party's Trustee deponed that the suit land is registered in favour of the Trustees of the Interested Party; that the Title Deed had been issued to the Applicant fraudulently and that there being no objection to the order of cancellation; the Land Registrar issued a Title Deed to the Interested Party.
5. The Applicants' counsel submitted that the Tribunal had no mandate to determine the issue of ownership of the suit land; that the suit land is situated within Mavoko Township and is not agricultural land and that the Applicant was never served with the claim and the matter proceeded ex-parte.
6. The Applicants' counsel submitted that the Tribunal's Award was read on 26th September, 2014 thus giving the parties the right to appeal and that this suit was filed within time.
7. The Interested Party's and the Respondent's advocates did not file Replying Affidavits.
8. The first issue that I should determine is whether the suit herein was filed within the requisite period of six (6) months (*See Order 53 Rule 2 of the Civil Procedure Rules and Section 9(3) of the Law Reform Act*).
9. The proceedings of the Athi River Division Land Disputes Tribunal shows that the Tribunal delivered its decision on 13th August, 2008.
10. In the said Award, the Tribunal directed the Land Registrar, Machakos, to amend and rectify the register in respect of parcel of land known as Mavoko Municipality Block 6/179 and have the Title Deed issued in favour of the Interested Party.
11. It is not clear when the Award by the Tribunal was adopted by the Magistrate's Court as per the Land Disputes Tribunal Act (*repealed*).
12. The Applicants have annexed on their Affidavit an order that was issued by the Magistrate on 5th September, 2014 in Machakos Misc. Civil Application Number 108 of 2008.
13. According to the said order, the Magistrate set aside "*the reading and adoption of the Tribunal award, Judgment and subsequent decree and all consequential orders.*"
14. The order further stated that "*the Tribunal Award will be read to the parties on 26th September, 2014.*"
15. The circumstances under which the order was made on 5th September, 2014 have not been disclosed to the court.
16. Although the court purported to set aside its earlier Judgment adopting the Award of the Tribunal, it did to set aside the Award by the Tribunal.
17. In my view, once the Tribunal makes an Award, the six (6) months' period stipulated under Order 53(2) of the Civil Procedure Rules and Section 9(3) of the Law Reform Act comes into play.
18. Indeed, the limitation period of six (6) months provided in those two statutes started running from the day the Tribunal made its decision and not from the time the court adopted the Award.
19. Consequently, the order of the court of 5th September, 2014 does not abridge the time within which the Applicants should have filed the current Notice of Motion.

20. If the Applicants' case is that they were not served with the claim at all, then they should not have filed an Application for an order of certiorari.

21. In any event, the Applicants have not denied that they have filed a suit in Machakos HCCC No. 11 of 2011 in respect to the suit land. They should pursue that suit.

22. It is for those reasons that I find the Notice of Motion dated 1st December, 2014 to be incompetent.

23. I therefore strike out the Notice of Motion dated 1st December, 2014 with costs to the Interested Party.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 29TH DAY OF SEPTEMBER, 2017.

O. A. ANGOTE

JUDGE