



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 38 OF 2005**

**REPUBLIC.....APPLICANT**

**EX PARTE.....ISMAEL MAZENZELI MARAMBA**

**VERSUS**

**CHERANGANYI LAND DISPUTES TRIBUNAL COMPRISING OF:**

**HILDA SATIA (CHAIRMAN)**

**TOM MUSUNGU (MEMBER)**

**DOMINIC CHEPTOO (MEMBER)**

**ISAYA KIPROP (MEMBER)**

**WILLIAM SUMI (MEMBER)**

**DINA KHAYOTA (MEMBER):.....1ST RESPONDENT**

**SENIOR PRINCIPAL MAGISTRATE KITALE LAW COURT..... 2ND RESPONDENT**

**RULING**

1. The Ex-parte applicant Ismael Mazenzeli Maramba filed a notice of motion dated 12.7.2005 under order 53 Rule 3 and 4 of the Civil Procedure Rules seeking an order of certiorari to bring into this court the decision of Cherangani Land disputes Tribunal in case No.6 of 2004 which was filed in Kitale Senior Principal Magistrates Court Land case No. 8of 2005 and quash the same.
2. The applicant attacks the Tribunal's decision on five grounds namely:-
  - (i) That no statement of claim was filed and served upon him as required.
  - (ii) That the Tribunal disregarded his evidence without assigning reasons for doing so.
  - (iii) That the Tribunal fell into error when it ordered him to move out of land which he had bought in 1998.
  - (iv) That the Tribunal erred in failing to find that that plot No.72 which he occupied was

different from plot no. 66 which the interested party was supposed to occupy.

(v) That the Tribunal award was not dated.

3. The interested party opposed the Ex-parte applicant's application based on his replying affidavit sworn on 8.3.2006. The respondents on their part opposed the applicant's application through grounds of opposition filed in court on 2.11.2006. The interested party denies the allegations of the applicant particularly that he was not served with any statement of claim. The respondents on the other hand contend that the applicant's application is premature and therefore an abuse of the process of court and that the applicant should have preferred an appeal to the provincial Appeals Committee. They also contend that the application by the applicant was not served upon them.
4. I have considered the applicant's application as well as the opposition to the same by the interested party and the respondents. There is an issue of competence of the motion by the applicant which was raised by Mr. Odongo state counsel. He contends that the applicant has not demonstrated that he obtained leave before filing the motion. He therefore argues that since that has not been demonstrated, the applicant's motion is incompetent. The record in this file shows that the applicant applied for leave which was granted on 21.6.2005. The leave was granted in the same file that the motion was later filed. There is no requirement that an applicant demonstrates in the main motion that he applied for leave and obtained the same. I therefore find that the motion is not incompetent on that score.
5. In applications for judicial review as in this one, the main concern of the court is on the processes followed and the decision arrived at. The court is not supposed to consider the merits or demerits of the decision. The court is supposed to consider whether the process leading to the decision was fair and in accordance with rules of natural justice. The court is also concerned with whether the Tribunal acted within its powers or not.
6. The Ex-parte applicant contends that the Tribunal disregarded his evidence without giving any reasons for doing so. This is a matter which goes to the merits or otherwise of the decision of the Tribunal. It cannot be a subject for Judicial review. If the applicant wanted to be heard on this point, he should have preferred an appeal to the Provincial Appeals Committee as provided for under the Land Disputed Tribunal Act No. 18 of 1990 (now repealed). This is the same as with grounds (iii) and (iv) in which the applicant complains about the findings of the Tribunal on the evidence presented before it. These were findings of fact which cannot form a subject for Judicial Review.
7. The applicant contends that there was no statement of claim filed and served upon him as required. I do not find any merit in this contention. The Ex-parte applicant fully participated in the proceedings. He was heard by the Tribunal. Witnesses were called and were heard. It is after this that a decision was arrived at. Section 3(5) of the Land Disputes Tribunal Act provided that each party upon whom a claim is served shall unless the claim is admitted file with the Tribunal an answer containing a reply to matters stated in the claim and a summary of the facts upon which he wishes to rely. This section gives 30 days to the person served. If the ex-parte applicant opted not to file any reply and chose to appear to be heard orally, that was his choice. He cannot claim that he was not served when he actually appeared and participated in the proceedings by giving evidence. The Tribunal did not turn him away on ground that he had not filed any response. He was treated fairly by being heard.
8. The last issue for consideration is whether the award of the Tribunal was dated. Though the ex-parte applicant contends that the award was not dated, it is clear from the proceedings which were annexed to the applicant's affidavit that the award is dated 9.12.2004. This same date appears on every other page of the proceedings of the Tribunal. The verdict of the Tribunal was sent to the Senior Principal magistrate's Court Kitale for adoption as required. A decree was extracted and it is clear from that decree that the Tribunal's award was dated 9.12.2004. There is therefore no basis upon which the applicant can argue that the award was not dated. The award was dated and signed by all the five members of the Tribunal. The signing and dating of the award was in accordance with the provisions of the Land Disputes Tribunal Act of 1990. I therefore find that the applicant's application lacks merit. The same is hereby dismissed with costs to the interested party and the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 18th February, 2016.

**E. OBAGA**

**JUDGE**

**COURT** - Delivered at 15:00pm in the absence of counsel for applicant and respondents who were aware of the date for ruling. Court Assistant - Isabellah.

**E. OBAGA**

**JUDGE**

**18/2/16**