



COPY

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

MISCELLANEOUS CASE NO. 107 OF 2013

SULEIMAN HEMED GUMBO APPLICANT

-VERSUS-

LANDREGISTRAR, KWALE.....RESPONDENT

RULING

[1] The applicant filed the Notice of Motion praying for the following orders

1. *That this Honourable Court be pleased to order the Land Registrar, Kwale to comply with the Court Order dated and given on 6th day of July 2009 in Kwale Principal Magistrate's Court Land Case No. 3 of 2009 between Suleiman Hemed Gumbo vs James Kihara Kinyanjui, Suni Limited, Kinondo Kibao Limited and Pius Ramesh Chandra.*

2. *Any other orders or directions this Honorable Court may deem fit to grant*

3. *That the costs of this application be provided for.*

[2] The application is based on the fact that the applicant was a legal heir and/or administrator of the Estate of Mohamed Hamed Gumbo who was initially the owner of Kwale/Galu Kinondo/37. That the applicant filed a dispute regarding sub-division of the said parcel of land at the Msambweni Land Disputes Tribunal in Land Dispute Case No. 84 of 2006 whereupon the said Tribunal heard the case and ordered that the said land No. Kwale/Galu Kinondo/37 reverts back to its original status and that the said land be registered in the name of the applicant Mohamed Mohamed Gumbo.

[3] The Attorney General filed grounds of opposition and stated that the applicant seeks to compel the Land Registrar Kwale to comply with an order in Kwale PMCC land case no. 3 of 2009 through a procedure of execution of judgment which is not provided for in law. That the order is vague and does not specify which parcel of land the said order is supposed to be registered on. That the land disputes tribunal lacked jurisdiction to issue the order it purports to grant. It was also argued that the order is likely to affect other parties who are not enjoined in the proceedings. That the applicant has no letters of

administration of the estate of the deceased Mohamed Hemed Gumbo to enable him to be registered as the owner of the suit property and finally that it is apparent that the respondents were not properly served in the proceedings in the Msambweni Land Disputes Tribunal.

[4] The Attorney General filed his written submissions but the applicant did not file any. In the written submissions the Attorney General relied on the fact that the Msambweni Land Disputes Tribunal had no jurisdiction to determine title to land. The Attorney General relied on the provisions of Sec. 3(1) of the Land Disputes Tribunal Act Number 18 of 1990. The Attorney General also relied on the fact that the procedure adopted by the applicant was wrong, since there was no decree that was ever extracted that was capable of being enforced.

The applicant argued in court that court orders are not made in vain, that they should be complied with. On the fact that they have no locus standi the applicants argued that what they were seeking was a limited order and that once registered, they can go for a full grant.

[5] These being the arguments of the applicant and the respondents can the Land Registrar Kwale be ordered to register the suit land in the names of the applicant as per the Principal Magistrates adoption of Land Dispute Case No. 3 of 2009"

[6] I have perused the proceedings in Land Disputes Tribunal No. 84 of 2006 on Kwale/Galu Kinondo /37 and the orders in Kwale PMCC Land Case No. 3 of 2009. The Land Disputes Tribunal in that judgment dated 12th August, 2008 stated

"It is therefore ordered here that all parcel of land Kwale/Galu Kinondo/37 revert back to its original status of one piece measuring 3.4. ha and any other subdivision purported to have been carved out from the entire Kwale/Galu Kinondo/37 cease to exist and all the titles be revoked. A fresh title in the name of Mr. Suleiman Hamed Gumbo, the heir of all that estate of Mohamed Mohamed Gumbo as per High Court of Kenya sitting in Mombasa on 7th December, 2007 on "Unlimited Grant of Letters of Administration and Litem! Cause No. 271 of 2007." This is also the wish of the remaining Gumbo Family."

[7] In doing this the elders went outside their mandate granted by Sec. 3 (1) of Act 18 of 1990 which provides their jurisdiction as follows

"subject to this Act, all cases of civil nature involving a dispute as to

- a) the division or 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 determined by the Land Disputes Tribunal. The tribunal therefore acted without jurisdiction. Their decision was a nullity and void¹. The Tribunal judgment being a nullity is therefore incapable of being adopted by the Principal Magistrates Court at Kwale in Land Case No. 3 of 2009. The adoption of the said judgment was also a nullity and is hereby set aside.

[8] Secondly, the obtaining of letters of administration for the Estate of Mohamed Hemed Gumbo on 7th December 2007 by Suleiman Hemed Gumbo was to Administer the deceased's estate. By the time the Limited Grant was issued there was no land parcel Kwale/Galu Kinondo/37. The land was

subdivided into Kwale/Galu Kinondo/1316, 1317, 1318, 1319. 1320 and 1321 on 10th March, 1997 and registered in the names of various proprietors. These subdivisions were not part of the deceaseds estate. The applicants attempt to use the temporary grant issued on 7th December, 2007 to file a suit for Kwale/Galu Kinondo/37 was misconceived.

[9] The Land Registrar was well within his rights to reject the application to register the court order on Kwale/Galu Kinondo/37 that had ceased to exist where there was no decree by a competent court to do so.

This miscellaneous application is therefore dismissed with costs to the respondents.

Dated and delivered in open court at Mombasa this 4th day of September, 2014.

S MUKUNYA

JUDGE

4.9.2014

In the presence of:

Adagi Advocate holding brief for Nyamboye Advocate for the applicant.

Namahya Advocate for the defendant

See Nairobi HC MISC NO. 926 of 1999

Nairobi HC. MISC. CA. 331 of 2003

Mombasa HC. MISC. 181 of 1999

Mombasa HC. MISC. 56 of 2012



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