



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GICHERU, TUNOI & PALL, J.J.A.)

CIVIL APPEAL NO. 66 OF 1994

BETWEEN

KYUNGUTI NDISO
APPELLANT

AND

MUTUNGA MUOTI 1ST
RESPONDENT

THE MINISTER FOR LANDS AND SETTLEMENT (THROUGH
ATTORNEY GENERAL)2ND RESPONDENT

(Appeal from the judgment of Justice Shields dated the

17th day of June, 1993

in

H.C.C.C. NO. 10 OF 1986)

JUDGMENT OF THE COURT

This is an appeal against the judgment of the High Court of Kenya at Nairobi (Shields, J.) given on June 17, 1993 whereby the learned judge dismissed the appellant's application for a prerogative order of certiorari.

A short summary of the matters giving rise to this appeal is that on October 14, 1985, the District Commissioner of Machakos District on behalf of the Minister of Lands and Settlement in the exercise of the powers under the provisions of section 29 (1) of the Land Adjudication Act (Cap 284 of the Laws of Kenya) ordered that land parcel number 375, in Kyethivo Adjudication Section of Machakos District be registered in the name of the 1st respondent, Mutunga Muoti.

The appellant being aggrieved by that decision applied on March 27, 1986, for leave to apply for an order of certiorari to remove into the superior court for the purpose of quashing the said order of the Minister on the grounds that there is an error apparent on the record, that is that the determination or decision of the

Minister to award the whole parcel of the land to the 1st respondent notwithstanding evidence that he was only claiming a portion of it and that the findings the basis of the determination were totally inconsistent with the evidence adduced before the Minister. Finally, it was averred that the proceedings were not conducted in accordance with the audi alteram partem rule of natural justice. Leave to apply for the order of certiorari was granted on September 4, 1986.

The application was fully argued before the learned judge and in a judgment written in a terse style, which we reproduce in full, he held:-

"I agree with the submissions of the learned state counsel. There is no error of Law manifested on the face of the record, there is no denial of natural justice and I find no collusion or perjury. This court when exercising supervisory jurisdiction over a tribunal where decision is declared to be final does not sit as a Court of Appeal. I accordingly dismiss the application with costs to the respondents."

From that decision of the High Court this appeal has now been brought to this Court. Counsel for the appellant, who was totally unprepared to conduct the appeal after his abortive attempt to postpone it on the ground that he was in Court only for the purpose of seeking adjournment merely read out the grounds of appeal as are enumerated in the memorandum of appeal. These grounds of appeal are as laid down seriatim in the statement in support of the application for leave to institute the proceedings in the superior Court. The main ground of appeal, however, is that there is an error apparent on the face of the record. Counsel in his submissions was unable to point out to us errors of law allegedly apparent on the face of the record or how the learned judge failed to direct his mind to those errors.

Perusal of the proceedings before the District Commissioner shows that both the appellant and the first respondent gave evidence and were cross-examined at length. Each of them called witnesses who were also subjected to lengthy cross-examination. It is plainly clear, therefore, that the appellant was given a full and fair opportunity of being heard. The decision reached after the deliberations was based on the evidence adduced by the parties before the District Commissioner. That decision, in our view, was not reached in violation of the rules of natural justice.

The onus to satisfy the learned judge that the District Commissioner ignored a relevant consideration or took into account an irrelevant consideration in the exercise of his discretion lay upon the appellant. He did not discharge this onus on the balance of probability.

We see no reason to differ from the findings of the learned judge. This appeal is devoid of merit and is accordingly dismissed with costs.

Dated and delivered at Nairobi this 19th day of December, 1996.

J. E. GICHERU

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

G. S. PALL

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR