**Narok County Council v Trans Mara County Council**

**Division:** Court of Appeal of Kenya at Kisumu

**Date of judgment:** 7 April 2000

**Case Number:** 25/

**Before:** Kwach, Akiwumi and O’kubasu JJA

**Sourced by:** LawAfrica

**Summarised by:** H K Mutai

*[1] High Court – Jurisdiction – Local authorities – Dispute – Apportionment of assets between two local*

*authorities – Apportionment to be on a fair and equitable basis as agreed between parties – Statute –*

*Power to apportion where there is no agreement conferred on Minister by statute – Whether High Court*

*has jurisdiction to determine dispute – Whether High Court’s jurisdiction ousted by statute –*

*Constitution section 60 – Local Government Act Chapter 265 sections 5, 28, 269, 270 and 399.*

**Editor’s Summary**

On 11 August 1994, the Minister for Local Government acting pursuant to powers conferred upon him by sections 5, 28 and 399 of the Local Government Act carved the Trans Mara County Council out of the territory of the Narok County Council and established it as an independent local authority. A dispute then arose between the two councils regarding the distribution of various assets and liabilities, including the entry fees collected from five lodges. Following a failure to resolve the dispute amicably, on 11 January 1996 Trans Mara filed a suit in the High Court against Narok and Kenya Association of Tour Operators seeking, *inter alia*, a sum of KShs 69 362 400 being monies collected by the latter from the lodges in question on behalf of Narok. Trans Mara claimed, *inter alia*, that, having been established as an independent council, it was entitled to its rights under the agreement between Narok and Kenya Association of Tour Operators and to the entry fees collected by Kenya Association of Tour Operators from the five lodges. Narok conceded that it had not remitted the disputed sum to Trans Mara but contended that the suit was premature as mutual deliberations regarding the alleged indebtedness were still going on. On 2 February 1996, Narok filed a preliminary objection seeking the dismissal of the suit on the grounds that it was incompetent, misconceived and that the provisions of section 270(*b*) of the Local Government Act Chapter 265 had not been complied with. On 15 March 1996, the court issued a ruling dismissing the objection on the ground that Section 60 of the Constitution conferred unlimited jurisdiction on the High Court and that there was nothing in either section 270 or the Local Government Act as a whole to oust the court’s jurisdiction to hear disputes between local authorities. On 2 May 1997, the Local Government Minister, acting under powers conferred upon him by the Act, set up a commission to deal with the distribution of the assets and liabilities of various local authorities, including the Narok and Trans Mara councils. Trans Mara’s suit was eventually heard between 28 October 1997 and 30 March 1998 with judgment being delivered on 4 June 1998. In its judgment, the court made various orders distributing the assets and liabilities between the two local authorities. Narok appealed primarily on the ground that the proceedings were a nullity because the court had no jurisdiction to hear the case.

**Held** – Section 270(*b*) of the Local Government Act Chapter 265 provided, *inter alia*, that where a part of a local government area became a part of a different local government area, the apportionment of rights, liabilities and assets between the two local authorities concerned would be undertaken on a fair and equitable basis, either as agreed between them or, in default of agreement, as directed by the Minister. Though section 60 of the Constitution gave the High Court unlimited jurisdiction, it did not clothe it with jurisdiction to deal with matters that a statute had directed should be done by a Minister as part of his statutory duty. In the instant case, the statute clearly provided that in default of agreement between the two councils, the apportionment of assets and liabilities would be undertaken as directed by the Minister. The jurisdiction of the High Court could only be invoked where the Minister refused to give a direction or, in purporting to do so, arrived at a decision that was grossly unfair or perverse. Where the Minister refused or neglected to act, the proper course was for either party to apply to the High Court for an order of *mandamus* compelling the Minister to perform his statutory duty. The Minister’s refusal to act could not confer on either party a right to initiate proceedings in court to determine the apportionment of the assets and liabilities. All the High Court could do was enforce, by way of judicial review proceedings, the implementation of section 270. The trial court therefore erred in apportioning assets between the two councils, as it had no jurisdiction to deal with the matter at that stage. The appeal would therefore be allowed, judgment set aside and the suit struck out.

**Case referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means explained; “**F**” means followed and “**LLR**” means LawAfrica Law Reports; “**O**” means overruled)

*Miller v Miller* [1988] LLR 1914 (CAK