



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

ENVIRONMENT & LAND COURT

JUDICIAL REVIEW NO.62 OF 2011

IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI

AND

IN THE MATTER OF THE LAW REFORMS ACT

AND

IN THE MATTER OF THE PRINCIPAL MAGISTRATES COURT AT SIAYA

LAND DISPUTES TRIBUNAL CASE NO.116 OF 2011

AND

IN THE MATTER OF SIAYA LAND DISPUTES TRIBUNAL LAND CASE

NO. SIAYA 115 OF 2011

AND

IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES 2010

BETWEEN

REPUBLICAPPLICANT

AND

THE CHAIRMAN LAND DISPUTES TRIBUNAL SIAYA1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

AND

MOSES OPIYO

PATRICK OTIENO OPIYO

ZAINABU OPIYOINTERESTED PARTIES

EX-PARTE: JOSEPH ODUOR ALIAS JOAKIM ODUOR ODUOR

JUDGMENT

1. By notice of motion dated 20th December 2011, **Joseph Oduor**, the Exparte Applicant, prays for an order of certiorari to call into this court and quash the **Siaya Land Disputes Tribunal Award in Land Case No.SYA/115/2011** of 28th September 2011 and adopted in **Siaya PMC Land Case No 116 of 2011** on 15th November 2011. He also prays for costs. The application is based on eight grounds on the face of the notice of motion, the statutory statement dated 23rd November 2011 and the verifying affidavit he swore on 23rd November 2011. The notice of motion named **Moses Opiyo, Patrick Otieno Opiyo and Zainabu Andika Opiyo** as the Interested Parties while **The Charmian, Land Disputes Tribunal Siaya and the Attorney General** were the 1st and 2nd Respondents. M/S Kowinoh & Co, Advocates filed notice of appointment for the Interested Parties dated 2nd December 2014. The counsel for the parties appeared before the court on 15th May 2015 and the counsel for the Respondents conceded to the notice of motion. The counsel for the Exparte Applicant and the Interested Parties then agreed to file written submissions but only counsel for the Exparte Applicant filed theirs dated 23rd July 2015.

2. The issues for determination are as follows:-

- a) Whether the Land disputes Tribunal had jurisdiction to deal with the dispute?
- b) Whether the Land disputes Tribunal award was ultra vires their jurisdiction?
- c) Whether the Interested Parties had capacity to file the claim?
- d) Whether the Interested Parties claim was time barred?
- e) Whether the Exparte Applicant was afforded a fair hearing by the Land disputes Tribunal.

3. The court has carefully considered the grounds on the notice of motion, statutory statement, verifying affidavit, and submissions by Exparte Applicant's counsel and come to the following conclusions;

a) That the suit land, **East Ugenya/Marumba/75**, is a registered land and therefore what the Interested Parties claim amounted to was a claim of title to a portion of that land. The determination of title to registered land was outside the jurisdiction of The Land Disputes Tribunals in view of **Sections 159 of the Registered Land Act, Chapter 300 of Laws of Kenya**, which is now repealed. The Tribunal's jurisdiction was as limited under **Section 3(1) of the Land, Disputes Tribunal Act**, now repealed, to disputes relating to division of, or the determination of boundaries to land, including land held in common, claim to occupy or work land or trespass to land. The above clearly shows that the Siaya Land Disputes Tribunal had no jurisdiction to deal with the claim of title to registered land lodged by the interested parties.

b) That though it is clear from the copy of proceedings before the tribunal that the Exparte Applicant was one of the two registered proprietors of the suit land, the Tribunal did not ensure that the Exparte Applicant was served with the claim papers if any had been filed or that he was accorded an opportunity to be heard. This was necessary as the Interested Parties claim would jeopardise the Exparte Applicant's interest on the suit land. He was entitled to be accorded a fair hearing in accordance with Article 50 of the Constitution 2010 and the rules of natural justice. The fact that the Tribunal proceeded with the hearing without according one of the registered proprietors of the suit land (Exparte Applicant) means the award therefore was irregular and unlawful.

c) That the Order of the Tribunal dated 28th September 2011, if executed, would involve cancelling or revoking the title held by the Exparte Applicant and that other so as to have the portion of half share awarded to the Interested Parties surveyed and registered in their

names. That order was obviously beyond the powers of the Tribunal in view of **Section 159 of the Registered land Act** and **Section 3(1) of the Land Disputes Tribunal Act**, and therefore ultra vires.

d) That the Interested Parties claim over the suit land was based on the share their deceased father, **Ameriko Opiyo**, was entitled to. There is however no indication whether the Interested Parties had obtained a grant or grant ad litem in accordance with the Law of Succession Act, Chapter 160 of Laws of Kenya so as to have capacity to sue for their father's estate.

3. That for reasons set out above the Exparte Applicant's notice of motion dated 20th December 2011 is allowed and the Siaya Land Disputes Tribunal award in case number 115 of 2011, and adopted in Siaya PMC Land Case No.116 of 2011 in respect of land parcel **East Ugenya/Murumba/75** is called into this court and quashed. The interested Parties will pay the Exparte Applicant's costs of the notice of motion. It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

Dated and delivered at Kisumu this 17th day of February 2016

In presence of;

Exparte Applicant Absent

Respondents Absent

Interested parties Absent

Counsel Mr Alinatwe for Momanyi for Exparte Applicant and Mr Mutai for Respondent

S.M. KIBUNJA

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17/2/2016

17/2/2016

S.M. Kibunja J

Oyugi Court Assistant

Ms Alinatwe for Momanyi for Exparte Applicant

Mr Mutai for the Respondent

Court: Judgment delivered in open court in presence of M/S Alinatwe for Momanyi for Exparte Applicant and Mr Mutai for Respondent.

S.M. KIBUNJA

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17/2/2016