



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

ENVIRONMENT & LAND COURT

JUDICIAL REVIEW NO.11 OF 2010

IN THE MATTER OF THE LANDS DISPUTES TRIBUNAL ACT NO.18 OF 1990 (REPEALED)

AND

IN THE MATTER OF THE SIAYA LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL

REVIEW IN THE NATURE OF PROHIBITION AND CERTIORARI

BETWEEN

REPUBLIC (ex-parte)

JAMES ARNUM OTAMBO.....APPLICANT

VERSUS

SIAYA DISTRICT LAND DISPUTES TRIBUNALRESPONDENT

AND

DANIEL AWUONDO OTEKRAINTERESTED PARTY

RULING

1. **Daniel Awuondo Otekra**, the interested party, filed the notice of motion dated 18/4/2013 seeking for stay of execution of the decree pending the hearing and final determination of Kisumu **HCC [ELC] No.133 of 2012** which is pending for hearing and the determination on which party pays the costs awarded to the Exparte Applicant. The application is based on the five grounds on the Notice of Motion and the supporting affidavit sworn by **Daniel Awuondo Otekra** on the 18th April 2013.
2. The application is opposed by the Exparte Applicant, **James Arnum Otambo**, through the grounds of opposition dated 22nd April 2013.
3. The counsel of the parties appeared before the court on 23rd June 2014 and agreed to have written submissions filed. The counsel for the Interested Party filed their written submissions dated 28th

October 2015 while Exparte Applicant counsel filed theirs dated 8th October 2015 on the same dates.

4. The court has carefully considered the grounds on the notice of motion, the supporting affidavit, the grounds of opposition and submissions by both counsels and come to the following conclusions:

a) That **James Arnum Otambo**, the Exparte Applicant, commenced this matter through the Exparte Chamber Summons dated 21st January 2010 seeking for among others leave to file an application for certiorari and prohibition orders. The court granted him leave and he filed the substantive application through the Notice of Motion dated 8th February 2010.

b) That the Interested Party filed the Notice of Motion dated 14/4/2010 seeking to set aside the exparte order of 10th February 2010 granting leave to file the substantive application and to strike out the Notice of Motion dated 8th February 2010. The application was heard on 21st June 2010 and ruling delivered on 30th June 2010 dismissing the "**application for want of competency**". The court also ordered that "**The Respondent shall be entitled to the costs of the application**". The respondent, for purposes of the notice of motion dated 14/4/2010, was the Exparte Applicant.

c) That subsequently, the Exparte Applicant's application dated 8th February 2010 was heard and allowed "**with costs to the applicant,**" in the judgment of the 14th November 2012. The court further ordered that "**the said costs shall be shouldered by both the respondent and the interested party.**" The Notice of Motion dated 8th February 2010 had listed **The Siaya Land Disputes Tribunal**, as the Respondent and **David Awuondo Otekra**, as the interested party. There is therefore no ambiguity in the court's order of 14th November 2012 on the parties to pay the costs of the Exparte Applicant. This court do not need to make any further determination on this issue and prayer (b) is misplaced.

d) That the court's judgment of 14th November 2012 has not been challenged on appeal and the court finds no merit on prayer (a) of staying the execution on costs as this case is finalized while HCC [ELC] 133 of 2012 is reportedly pending. The normal principle is for the costs to follow the events as observed by Superior Courts in several decisions including the Supreme Court of Kenya in **Jasbir Singh Rai & 3 others -V- Tarlochan Singh Rai & 4 others** [2014] eKLR. This is indeed what Section 27 of the Civil Procedure Act provides. This court cannot sit on appeal on its orders issued on 14th November 2012 as any party that was not satisfied had recourse in the Court of Appeal.

5. That for reasons set out above the application dated 18/4/2013 is without merit and is dismissed with costs.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

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

In presence of:

Exparte Applicant Absent

Respondent Absent

Interested party Absent

Counsel M/S Namwasibwa for Exparte Applicant

Mr Mwasibu for Okero for Interested Party

Mr Mutai for Respondent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

17/2/2016

17/2/2016

S.M. Kibunja J.

Oyugi court Assistant

Parties absent

Mr Mutai for the Respondent

M/S Namwasibwa for Exparte Applicant

Mr Mwaisibwa for Okero fir Interested party

Court: Ruling read in open court in the presence of M/S Namwasibwa for Exparte Applicant, Mr Mwaisibwa for Okero fir Interested party and Mr Mutai for the Respondent.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

17/2/2016