



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

J.R. MISC APPL. NO.41 OF 2010

REPUBLICAPPLICANT

VERSUS

CHAIRMAN KISUMU EAST DISTRICT LAND DISPUTES

TRIBUNAL

CHIEF MAGISTRATE'S COURT KISUMU

THE LAND REGISTRAR KISUMU DISTRICT

THE ATTORNEY GENERAL.....RESPONDENTS

J U D G M E N T

1. On 26/10/2010, The Exparte Applicant – **EVANS OTIENDE OMOLLO** – filed this matter by way of Notice of Motion against the four respondents – **CHAIRMAN KISUMU EAST DISTRICT LAND DISPUTES TRIBUNAL, THE CHIEF MAGISTRATE'S COURT KISUMU, THE LAND REGISTRAR KISUMU DISTRICT, and THE ATTORNEY GENERAL**. But there was also the interested party – **RAPHAEL ONJULA MAGANDA** – who is actually the person tussling over land Parcel **KISUMU/MANYATTA B/214** with the Exparte Applicant.
2. The Notice of Motion was filed following granting of leave to do so in an earlier application, a Chamber Summons, that was heard and determined on 6/10/2010. Two prayers are asked for in the Notice of Motion. They are as follows:-

Prayer 1: That the Court be pleased to issue an order of **CERTIORARI** to remove into the High Court and quash the decision of **KISUMU EAST DISTRICT LAND DISPUTES TRIBUNAL** in Land Tribunal case No.23/09 dated 9/4/2010 and adopted in **KISUMU CHIEF MAGISTRATE'S COURT LAND CASE NO.6 OF 2010** on 3/6/2010.

Prayer 2: That the costs of the application be in favour of the applicant.

3. The premise and thrust of the case emerge both in the statement of facts and the verifying Affidavit filed with the earlier application seeking leave to file the present application.
4. It is said the Exparte Applicant is the owner of **KISUMU/MANYATTA B/214** (Suit land hereafter). The interested party filed land case No.23/09 in the now defunct Land Disputes Tribunal, Kisumu, claiming ownership. The tribunal decided in favour of the interested party and the decision of the tribunal was subsequently adopted as judgment of Court in Chief Magistrate's

- Court, Kisumu, Vide land Case No.6/2010. The tribunal is said to have acted in excess of its jurisdiction and the decision together with its subsequent adoption by the Court were all a nullity.
5. The interested party said he bought the Suit land in the year 1991 at 200,000/=. At the time the land belonged to one **PIUS NGONDI NDWIGA**. Ndwiga was subsequently supposed to avail the title. The interested party then put up 3 houses on the suit land. Ndwiga then turned around and started claiming rent. The matter even went to Rent Restriction Tribunal, Kisumu.
 6. The Exparte Applicant then emerged later to claim that Ndwiga had sold the land to him.
 7. The Exparte Applicant availed decided cases to buttress his propositions. On jurisdiction, the case of **R V THE CHAIRMAN, KEIYO DIVISION LDT ATTORNEY GENERAL EXPARTE TABYOTIN KABON EGO (2008) eKLR** was availed. Also availed was **MOHAMED ZAFAR NIAZ SAEED CHAUDRY & WAHEED VS PERMANENT SECRETARY, MINISTRY OF EDUCATION (2006) Eklr**.

From the two cases, it emerges that a body acts without or in excess of jurisdiction where its action is unauthorised by law or where there is inaction on its part contrary to the dictates of the law. The Land Disputes Tribunal is said to have had no jurisdiction to deal with disputes in respect of title to land.

8. I have read the submissions of the interested party. There are infact two sets of submissions. One set is styled "**THE INTERESTED PARTY'S WRITTEN SUBMISSIONS**" while the other is styled "**THE RESPONDENT'S WRITTEN SUBMISSIONS**". The second set may seem to belong to the Respondents but its contents show the writer as the interested party. And the signatures in both sets look similar. It is clear from the records that the Respondents conceded to the application. That happened on 24/5/2012.
9. The submissions of the interested party seem to focus on the merits of the case rather than the legality of what the tribunal did. To that extent, the interested party can be said to have been labouring under a serious misdirection. He misunderstood the thrust of the case and delved into issues which are not for this court to decide.
10. I think this is a simple and straightforward matter. The law then applicable to the matter is the now repealed **LAND DISPUTE'S TRIBUNAL'S ACT**. The relevant provision was Section 3(1) and it stated as follows:

"3(1) Subject to this ACT, all cases of Civil nature involving a dispute as to:

- (a) the division of, or the 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 heard and determined by a tribunal established under Section 4.

11. For clarity, Section 4 established the tribunal, like the one that handed down the decision being challenged herein. From the provisions of Section 3, it is clear that the tribunal was not clothed with jurisdiction to decide on issues of ownership; yet that is what it precisely did in this case. Could it do so? The answer is no. And the cases availed by the Exparte Applicant are clear on this.
12. In addition, there are the decided cases of **R VS THE CHAIRMAN, MERU CENTRAL DISPUTES TRIBUNAL EXPARTE JAPHET KINYUA MUTHAMIA:**

HCC MERU MIS.187/2005 and JOTHAM AMUNAVI VS CHAIRMAN, SABATIA DIVISION LAND DISPUTE'S TRIBUNAL AND ENOS KENYANI AMUNAVI: CA NO.256/2002.

These are decisions where the issue, like in this case, was lack of jurisdiction and the courts quashed the decision of the tribunal and/or gave other orders.

13. Further, it is well worth pointing out the observations of the court in **SAID BIN SEIF VS SHARIFF MOHAMED SHATRY (1938) KLR 9** while referring to the case of **RAJLAKSHMI DASEE VS KATYANI DASEE**. The court observed,

“If a court has no jurisdiction over the subject matter of the litigation, its judgment and orders, however precisely certain and technically correct, are mere nullities, and not only voidable: they are void and have no effect either as estoppel or otherwise and may be set aside at any time by the court in which they are rendered, but be declared void by every court in which they are presented”.

14. It therefore follows that what the tribunal did, and the subsequent ratification of its action by the Court, were all without legal basis. The tribunal lacked the law to anchor its decision and the subsequent acceptance of the tribunal's decision by the Court could not validate its legality.

15. Accordingly therefore, the application herein succeeds and prayers 1 and 2 as sought are hereby granted.

A.K. KANIARU – JUDGE

29/1/2015

29/1/2015

Before A.K. Kaniaru – Judge

Diang'a G. - Court Clerk

Interested party – Present

Exparte Applicant – absent

Oyuko for Ojuro for Exparte Applicant

Nyauma (AG's office) present for Respondents

Nyawiri (absent) for Interested party

Interpretation: English/Kiswahili

COURT: Judgment read and delivered in open **COURT**.

Right of Appeal – 30 days

A.K. KANIARU – JUDGE

29/1/2015