



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JUDICIAL REVIEW NO.12 OF 2012

REPUBLIC

EXPARTE: MAURICE OTIENO OLIECH.....PLAINTIFF

VERSUS

KISUMU EAST DISTRICT LAND DISPUTES

TRIBUNAL & ANOTHER.....DEFENDANTS

J U D G M E N T

1. This judgment relates to land parcel No. **KISUMU/KAWINO/702** (also known as Land Parcel No.702 Kawino adjudication Section), suit land hereafter. The suit land is registered in the name of **DAUDI OSUE NYAWARA** - now presumed dead or lost.
2. The suit land was subject of a dispute at **KISUMU EAST LAND DISPUTES TRIBUNAL** vide case No.07/2011. The dispute was between the Exparte Applicant herein – **MAURICE OTIENO OLIECH** – and the interested party – **HESBORN NYAWARA OGADA**. The two parties were claimant and objector respectively in the dispute. It seems clear that the Exparte Applicant wanted the interested party ordered to vacate the suit land, something the tribunal did not do.
3. Instead, the tribunal ordered that the suit land be sub-divided with $\frac{1}{4}$ portion to belong to the interested party while the exparte Applicant was to be a caretaker of the remaining $\frac{3}{4}$ portion.
4. The Exparte applicant felt aggrieved and came to Court vide this suit for review. He argues that the tribunal had no jurisdiction to make that order. He also argues that the tribunal made an order against Daudi Osue Nyawara, the registered owner, without hearing him. Yet another complaint was that the Exparte Applicant himself could not be made a caretaker as he is not the registered owner. He wouldn't, he said, be in a position to comply with such order.
5. All this led the Exparte Applicant to apply for the following orders:

(a) That this honourable court be pleased to grant to the applicant an order of Certiorari to remove to the High Court and quash (i) the decision of KISUMU EAST DISTRICT LAND DISPUTES TRIBUNAL dated 27/10/2011 in Tribunal case No.07 of 2011, as well as (ii) the decision and judgment of Kisumu Chief Magistrate's Court dated 3/2/2012 in Kisumu CMC Land case No.95 of 2011, pursuant to which one quarter of the suit land was awarded to the interested party.

(b) Costs of this application plus interests be provided for.

6. Both the respondents and the interested party were served. Both indicated that they were not opposing the application herein, with the respondent doing so on 23/9/2013 and the interested party doing so also on the same day. This therefore is a matter without a contest.
7. Orengo for Exparte Applicant filed submissions on 23/9/2013 and amplified what the application

contain. In addition, he availed the following decided cases to the court for guidance.

(a) **ASMAN MASOBA WEPUKHULU & WYCLIFFE BARASA VS FRANCIS WAKWABUBI BIKETI: KISUMU CA NO.157/2001.**

(b) **JOTHAM AMUNANI VS THE CHAIRMAN, SABATIA DIVISION LAND DISPUTE'S TRIBUNAL & ENOS KENYANI AMUMAUI: KISUMU: CA NO.256/02.**

(c) **JOSEPH OKELLO ONDEWE VS ZADOCK OKUMU OMBAKA: KISUMU HCCA NO.164/03.**

8. In all these cases the land tribunal's decisions and/or the decisions of the court adopting them, were quashed because the deciding bodies acted without or in excess of jurisdiction.
9. The jurisdiction of the tribunal is provided for in Section 3(1) of the Land Disputes Tribunal's Act, No.18/1990 which provides:

“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 S.4.

10. The tribunal had no inherent jurisdiction. Its entire jurisdiction was as contained in section 3(1) above. When it purported to award ¼ of the suit land to the interested party, it was obviously acting without jurisdiction. It had no business at all making a decision that conferred ownership on the interested party. It also had no business appointing the Exparte Applicant a caretaker of land he did not own. In fact the tribunal's jurisdiction did not include appointing caretakers.
11. I think it is because of all this that both the respondent and the interested party saw sense in not opposing the suit.
12. The application herein is therefore allowed and an order of **CERTIORARI** is granted as asked for. But when it comes to costs, it is worthy noting that it is the Exparte Applicant who dragged the interested party to the tribunal. He is also the one who has brought him there. The Exparte Applicant will not be awarded costs. Let each side therefore bear its own costs.

A.K. KANIARU – JUDGE

19/3/2015

19/3/2015

Before A.K. Kaniaru – Judge

Diang'a G. - Court clerk

No party present

M/s Aliongo (AG's office) for Respondents

Other counsels absent

Interpretation: English/Kiswahili

COURT: There is a Notice dated 10/3/2015 for delivery of the judgment herein.

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

Right of Appeal – 30 days.

A.K. KANIARU – JUDGE

19/3/2015