



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**ENVIRONMENT AND LAND MISC. CIVIL APPL. NO. 118 OF 2009(JR)**

**IN THE MATTER OF AN APPLCITION BY JARED OBIERO OUYA FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF ORDER LIII OF THE CIVIL PROCEDURE RULES**

AND

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

BETWEEN

REPUBLIC .....  
..... APPLICANT

VERSUS

LAND DISPUTES TRIBUNAL AWENDO DIVISION ..... RESPONDENT

AND

ROSE ADHIAMBO OLUOCH ..... INTERESTED  
PARTY

**JUDGMENT**

1. The Notice of Motion application dated 5<sup>th</sup> January 2010 was brought by the ex parte applicant, Jared Ouya Obiero (hereinafter referred to only as “the applicant”) pursuant to leave that was granted by this court on 16<sup>th</sup> December 2009. The applicant sought the following main reliefs;
  - a. **THAT this court be pleased to grant orders of certiorari to remove into this court and quash the decision of the Migori/Rongo Land Disputes Tribunal dated 27<sup>th</sup> July 2009 that was made in Case No. 76 of 2005.**
  - b. **THAT the court be pleased to prohibit the land registrar Migori/Rongo District from registering land parcel No. North Sakwa/Kamasoga/1422 (hereinafter referred to as the “suit property”) in the name of the interested party and the said interested party from using the property in a manner inconsistent with the proprietary rights of the applicant.**
  - c. **THAT the cost of this application be provided for.**
2. The application was brought on the grounds set out in the verifying affidavit of the applicant

sworn on 13<sup>th</sup> October 2009 and the statement of facts dated 14<sup>th</sup> October 2009 which accompanied the application for leave. The facts that gave rise to the application as set out in the said statement of facts and verifying affidavit are as follows. The applicant was at all material times the registered proprietor of all that parcel of land known as **LR No. North Sakwa/Kamasoga/1422** (hereinafter referred to as “**the suit property**”) which measures 2.2 ha. The applicant purchased the suit property from one, **Oluoch Ochiel, deceased** (hereinafter referred to only as “**Oluoch**”) sometimes in the year 1989. The suit property was registered in his name on 31<sup>st</sup> July, 1992 on which date he was also issued with a title deed. Sometimes in the year 2005, the interested party herein who is the one of the widows of Oluoch lodged a claim against the applicant with the respondent with respect to the suit property.

3. In her claim before the respondent, the interested party contended that Oluoch had only leased the suit property to the applicant. The interested party accused the applicant of having fraudulently caused the suit property to be registered in his name. She refuted the applicant’s claim that the suit property had been sold to him by Oluoch. The applicant appeared before the respondent and put forward his defence to the claim by the interested party. He contended that he had acquired the suit property lawfully from Oluoch at a consideration of Ksh.36,000/=. He contended that all necessary consents were sought and obtained before the suit property that was portion of a larger parcel of land then known as LR No. North Sakwa/Kamasoga/618 was transferred and registered in his name. The applicant contended that he took possession of the suit property in the year 1990 and cultivated sugar cane on the same peacefully until the interested party who all along worked for him on the suit property entered the suit property and started harvesting his sugar cane claiming that the suit property had only been leased to him by Oluoch. The applicant contended that the interested party was being used by third parties to dispossess him of the suit property.
4. After hearing the interested party and the applicant together with the witnesses who appeared before it, the respondent made its decision on the interested party’s claim against the applicant on 27<sup>th</sup> July, 2009. In its decision, the respondent found that the applicant had acquired the suit property unlawfully and ordered that the defendant’s title to the suit property be cancelled and the property registered in the name of the interested party. This is the decision that prompted these proceedings. In the present application, the applicant has contended that the said decision by the respondent was made without jurisdiction and as such the same is null and void.
5. The respondent and the interested party were served with the application but none of them opposed the same. The applicant’s advocates filed written submissions in support of the application on 18<sup>th</sup> July, 2011. When the application came up for hearing on 28<sup>th</sup> May 2013, I directed the applicant to serve the said submissions upon the respondent and the interested party. Despite service of the said submissions upon them, the respondent and the interested party filed no submissions in reply. I have considered the applicant’s application, the statutory statement and the verifying affidavit that was filed in support thereof. I have also considered the applicant's written submissions. I am of the opinion that the main issues that present themselves for determination in this application are as follows:-

- i. Whether the respondent had jurisdiction to determine the dispute that was referred to it by the interested party?
  - ii. Whether the respondent’s decision that made on 27<sup>th</sup> July, 2009 was valid?
  - iii. Whether the applicant is entitled to the reliefs sought against the respondent and the land registrar Migori/Rongo district.
6. I am in agreement with the applicant’s submission that the respondent acted outside its jurisdiction when it entertained the interested party’s claim against the applicant. As rightly submitted by the applicant’s advocate, the respondent was established under the Land Disputes Tribunal Act, No. 18 of 1990 (now repealed) (hereinafter referred to only as “**the Act**”). The powers of the respondent were clearly spelt out in the said Act. The respondent could not exercise or assume powers outside those conferred by the Act. Section 3 (1) of the Act that the applicant has referred to sets out the disputes over which the 1<sup>st</sup> respondent had jurisdiction as follows:

**“...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**
7. It is clear from the foregoing that the respondent did not have jurisdiction to determine disputes over ownership of or title to land. The respondent did not also have jurisdiction to make orders for the cancellation of titles to registered land. The dispute which the respondent was called upon by the interested party to determine concerned the ownership of the suit property. The interested party claimed that the applicant had acquired title over the suit property illegally. The interested party sought the cancellation of the applicant's title over the suit property and the registration of the property in her name. The respondent granted both reliefs. Under section 143 of the Registered Land Act, Cap 300 Law of Kenya (now repealed), only the court had jurisdiction to order the rectification of the register of land registered under the said Act by cancellation of any entry therein on account of fraud or mistake.
  8. It follows from the foregoing that if the interested party believed that the applicant had acquired the suit property illegally and wanted his title cancelled, her recourse lied in the High Court and not with the respondent. The respondent had no jurisdiction determine the owner of the suit property as between the interested party and the applicant. It also had no jurisdiction to cancel the applicant's title. All the authorities that were cited by the applicant support this position. In the case of **The Owners of the Motor Vessel "Lilian S" vs. Caltex Oil (Kenya) Ltd. [1989] KLR 1**, Nyarangi J A. stated at page 14 that **"Jurisdiction is everything. Without it a court has no power to make one more step"**. Jurisdiction cannot be assumed neither can it be conferred by agreement. As was stated in the case of **Desai –vs- Warsama [1967] E. A 351**, no court can confer jurisdiction upon itself and where a court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, its proceedings and determination become nullities.
  9. Having come to the conclusion that the respondent had no jurisdiction to entertain the claim that was brought before it by the interested party, it is my further finding that the proceedings before the respondent and its decision made on 27<sup>th</sup> July 2009 were a nullities. I am of the opinion that it was not open to Migori District Land Registrar to act upon a null and void decision. In the case of **Macfoy –vs- United Africa Co. Ltd [1961] 3 ALLER 1169**, Lord Denning stated as follows concerning an act which is a nullity at page 1172;

**"If an act is void then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the court to declare it to be so. And every proceeding which is founded in it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there it will collapse."**
  10. The last issue for consideration is whether this is an appropriate case to grant the orders of certiorari and prohibition sought by the applicant. This court has power under section 13 (7) (b) of the Environment and Land Court Act, 2011 to grant the prerogative orders sought. As I have stated hereinabove, the respondent exceeded its powers when it purported to determine the interested party's claim against the applicant over the suit property. Its decision as I have stated above was a nullity. Such decision is liable to review by this court. I am therefore satisfied that this is an appropriate case to grant the orders sought by the applicant. I will however not grant the orders sought against the District Land Registrar, Migori/Rongo District because it was not joined as a party to this judicial review application. No order can issue in a suit against a non-party.
  11. In conclusion, the applicant's Notice of Motion application dated 5<sup>th</sup> January, 2010 is allowed in terms of prayer 1 thereof. Each party shall bear its own costs of the application.

**Delivered, Dated and Signed at Kisii this 24<sup>th</sup> day of April, 2015.**

**S. OKONG'O**

**JUDGE**

**In the presence of:**

<b><u>Mr.</u></b> Omondi	for the applicant
N/A	for the respondent
N/A	for the Interested Party
Mobisa	Court Clerk

**S. OKONG'O**

**JUDGE**