



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JR NO.30 OF 2011

REPUBLIC.....APPLICANT

VERSUS

KISUMU EAST LAND DISTRICT

DISPUTES TRIBUNAL.....1ST RESPONDENT

KISUMU CHIEF MAGISTRATE.....2ND RESPONDENT

J U D G M E N T

1. The ex parte Applicant – **WILLIAM RABARI ABUTO** – filed this application for Review on 15/8/2011. The application is against two respondents – **KISUMU EAST LAND DISTRICT DISPUTES TRIBUNAL** (1st Respondent) and **KISUMU CHIEF MAGISTRATE** (2nd Respondent). It is also touching three interested parties – **LUCAS OBURA ONGONG, JACKTONE LANG'O and JOHN OTIENO ONGANY.**
2. In essence, the ex parte applicant is seeking an order of **CERTIORARI** to bring to the High Court the decisions of 1st and 2nd respondents as appearing in **KISUMU EAST DISTRICT LAND DISPUTES TRIBUNAL CASE NO.57 of 2010** and **KISUMU CMCC NO.23 of 2010** for quashing. Provision for costs of the application is also asked for:
3. The application was filed pursuant to leave of Court to file it granted on 28/7/2011. The application for leave was accompanied by grounds, verifying affidavit and statement of facts all giving some history of the case and justification for filing the application.
4. In a nutshell, the interested parties went to first respondent with a case claiming ownership of land parcel No. **KISUMU/KATHO/737** registered in Ex parte applicant's name. The tribunal proceeded with the case and awarded the land to two of the interested parties – **JACKTONE LANGO** and **JOHN OTINEO ONGANY.** The award appears to be silent on the other interested party – **LUCAS OBURA ONGONG.**
5. It is that award that constitutes the Kernel of the application and it is posited that the 1st respondent had no power or jurisdiction to make that award, hence the need to quash it.
6. The interested parties through **JACKTONE LANG'O** filed a replying affidavit on 20/6/2012. A history is given and the land (suit land hereafter) was said to have originally belonged to Lango's father – **GABRIEL ONGONG AWUONDA** - who in turn had inherited it from his father and grandfather to **LANG'O – AWUONDA ADHANJA.**
7. The Ex parte Applicant was then allowed to cultivate rice and sugarcane on the land. That

arrangement however ceased in 1985. Lang'o was then working in Nairobi. Lango's father died and the exparte Applicant fraudulently repossessed the land and subsequently registered it in his name. The case before the tribunal sought to challenge all that. According to interested parties, the tribunal had jurisdiction to do what it did.

8. The two respondents conceded to the application.
9. The matter never went for hearing. Submissions were filed instead. The Exparte applicant's submissions were filed on 17/7/2013. The submissions give a highlight of the case of interested parties before the tribunal and then reiterated that the tribunal had no jurisdiction to award the land to interested parties.
10. The submissions of the interested parties were filed on 26/7/2013. They are broadly a re-statement of the case before the tribunal. The exposition of the law is however not very clear. There seems to be an attempt to cast the decision of the tribunal as non-existent because it was adopted as court's decision. The backing for this position seem to come from the decided cases of **REPUBLIC V CHAIRMAN LAND DISPUTE TRIBUNAL KIRINYAGA DISTRICT & ANOTHER EXPARTE KARIUKI (2005) 2 KLR 10 AND WAMWEA VS CATHOLIC DIOCESE OF MURANGA REGISTERED TRUSTEES (2003) KLR 389**. The Courts in the two cases expressed the position that once the decision of the tribunal is adopted by the Court it ceases to exist. The import of this here is that the Exparte applicant seems to be challenging a non-existent decision.
11. That position is wrong. The wording of the prayer for certiorari is clear. It addresses the decision of the tribunal as adopted by Court. Infact, it is from that decision that the interested parties were making an application to the Court to be registered as owners of the suit land, a move that would obviously adversely affect the **EXPARTE** Applicant. The application to that effect is dated 30/6/2011 and is in Court file as annexure WRA -4.
12. Did the tribunal have jurisdiction to do what it did?

The authority for the tribunal to conduct proceedings is derived from provisions of the now repealed LAND Dispute's Tribunal Act (Act No.18 of 1990). The precise mandate is contained in Section 3(1) of that statute which is as follows: The tribunal had power to decide on Division of, or determination of boundaries to land, including land held in common, a claim to work or occupy land, and trespass to land.

13. Quite clearly, it is plain that the tribunal had no power to decide on ownership or delve into issues of title. Yet this is precisely what the tribunal did.
14. The tribunal's decision was therefore a nullity in law. It was bad and void for all practical and legal purposes. Any move – like the interested parties application seeking to be registered as owners – based on that decision is bad and no competent court of law can countenance it.
15. It is for these reasons that the Exparte Applicant's application is found meritorious and the same is allowed with costs to exparte applicant.

A.K. KANIARU

21/1/2014

21/1/2014

A.K. Kaniaru - Judge

Dianga George – Court Clerk

No party present

Mwamu for interested party

Kowino for Exparte Applicant

No appearance for A.G's office

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

Right of Appeal – 30 days.

A.K. KANIARU – JUDGE

21/1/2014