



**REPUBLIC OF KENYA**

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

**JR 48 OF 2010**

REPUBLIC.....PROSECUTOR

VERSUS

1. THE LAND DISPUTE TRIBUNAL HOMABAY DISTRICT.....1ST RESPONDENT
2. SENIOR RESIDENT MAGISTRATE.....2ND RESPONDENT
3. SILA OMONDI OWUOR.....INTERESTED PARTY

**J U D G M E N T**

1. The Ex-Parte applicant herein – **SILVANUS OLUOCH OMONDI** – filed the application dated 19/11/2010 on 22/11/2010 seeking to get orders of **CERTIORARI** to quash two decisions of first and second respondents.
2. The application was filed pursuant to leave granted on 1/11/2010. It was brought against three parties – **LAND DISPUTES TRIBUNAL, HOMA BAY DISTRICT** (1st Respondent), **SENIOR RESIDENT MAGISTRATE** (2nd Respondent) and **SILA OMONDI OWUOR** (interested party)
3. The orders of **CERTIORARI** seek to quash the decision of 1st Respondent to arbitrarily award land Parcel No. **NORTH KANYAMWA/KAYAMBO/KWAMO/585** to the interested party while the 2nd respondent is said to require a similar order to quash a decision adopting and endorsing the 1st respondent's decision.
4. Vital information is contained in the application for leave filed earlier, with the grounds advanced stating, inter alia, that the 1st respondent had no jurisdiction to entertain the claim filed before it by Exparte applicant as it concerned title while the subsequent decision by 1st respondent to cancel the Exparte Applicant's title deed is faulted because the power to cancel was not reposed in the 1st respondent.
5. Both the statement of facts and the verifying affidavit accompanying the application for leave are clear that the **EXPARTE** applicant was the registered owner of the subject property. But the 1st respondent sought to interfere with the title and the 2nd respondent endorsed the 1st respondents decision.
6. It is clear that the respondents and the interested party were served. There is an affidavit of service filed on 25/11/2013. The respondents conceded to the Exparte applicant's application on 24/4/2013. The input of the interested party is lacking.
7. The law applicable at the time was **LAND DISPUTE'S TRIBUNAL ACT** (Act No.18 of 1990). The mandate of the tribunal that presided over the matter was contained in Section 3(1) of that Statute. That Section provided that the tribunal had jurisdiction to decide on:

1. **Division of, or determination of boundaries to land, including land held in common.**
  2. **A claim to work or occupy land**
  3. **Trespass to land**
8. It is clear from the foregoing that the tribunal had no mandate to order cancellation of title or handle any title – related issues. Yet that is precisely what the tribunal (1st respondent) did and the 2nd respondent followed up by endorsing that decision.
  9. In **R. V NYAMAIYA Land Disputes Tribunal and 3 others EXPARTE BENARD ONDIEKI YOHANA: HCC MISC. APPLICATION NO.1/09, KISII**, the tribunal had purported to cancel a title. The applicant, **BENARD ONDIEKI**, went to **COURT** arguing that the 1st respondent acted ultra -vires. The Court found for Ondieki and quashed the decision.
  10. In the submissions filed by counsel for the **EXPARTE** Applicant herein decided cases espousing the same position are also cited. One such case is **R V DIVISIONAL LANDS DISTRICT TRIBUNAL, NORTH KINANGOP** and another **EXPARTE MAHASON MUUNDI NGUYI (2010) Eklr** while the other is **MUNGAI NJOROGE VS GITHUNGURI LAND DISPUTE TRIBUNAL AND OTHERS (2007) EKLK**.
  11. It is clear therefore both from statute and decided case law that the tribunal had no power to do what it did. Its decision was therefore null and void and so also was the decision of the 2nd respondent endorsing the tribunal's decision.
  12. What to do with such decisions is clear from past judicial pronouncements. In **MACFOY VS UNITED AFRICA COMPANY LTD (1961) 3 ALL ER 1169**, Lord Denning had this to say: **“.....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 declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.....”**
  13. And in **KARANJA VS ATTORNEY GENERAL: HCC NO.310/1977, NYERI**, the Court of Appeal observed: **“.....any order made without jurisdiction is a nullity and no amount of legal ingenuity can turn that into a valid order.....”**.
  14. Need I say more? It is clear that the decisions of 1st and 2nd respondents had no basis in law and were therefore null and void ab-initio. It is for this reason that the orders of **CERTIORARI** are granted as prayed for in the application herein. Costs are also awarded to **EXPARTE** applicant.

**A.K. KANIARU – JUDGE**

**21/1/2014**

**21/1/2014**

A.K. Kaniaru – Judge

Dianga George – C/C

No party present

Interpretation – English/Kiswahili

Mwamu for Exparte Applicant

Nobody present from Attorney General's office

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

Right of Appeal – 30 days.

**A.K. KANIARU – JUDGE**

**21/1/2014**