



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

JUDICIAL REVIEW NO. 13 OF 2010.

**IN THE MATTER OF AN APPLICATION BY JARED MWIMALI MUKUMA ALIAS
MUKHWANDALA FOR ORDERS OF JUDICIAL REVIEW CERTIORARI AND
PROHIBITION**

AND

IN THE MATTER OF THE DECISION OF AMUKURA LAND DISPUTE TRIBUNAL .

IN UNNUMBERED LAND CASE IN RESPECT OF L.R. NO. SOUTH TESO/

APOKOR/2478

AND

IN THE MATTER OF BUSIA PRINCIPAL MAGISTRATE'S COURT LAND DISPUTE.

TRIBUNAL CASE NO. 26 OF 2010.

MOSES ORONE =VS= JARED MWIMALI MAKUMA.

BETWEEN

**REPUBLIC:.....
APPLICANT**

VERSUS

THE CHAIRMAN

**LAND DISPUTE TRIBUNAL AMUKURA DIVISION:.....1ST RESPONDENT
PRINCIPAL MAGISTRATE**

BUSIA LAW COURT:.....2ND RESPONDENT

AND

MOSES ORONE:..... INTERESTED PARTY.

EX-PARTE:

JARED MWIMALI MUKUMA

ALIAS MUKHWANDALA.

J U D G M E N T.

JARED MWIMALI MUKUMA alias **MUKHWANDALA** through Motion dated 28.9.2010 prays for:

- a. Order of certiorari to bring to this court the unnumbered and undated decision of Amukura Land Disputes Tribunal in respect of South Teso/Apokor/2478 for quashing.
- b. Order prohibiting the Principal Magistrate's Court, Busia from adopting, executing and or otherwise enforcing the said decision of Amukura land Disputes Tribunal lodged in Busia PMC. Land Dispute Case No. 26 of 2010.
- c. Costs.

The application is based on 13 grounds which are summarized as follows;-

1. That the tribunal did not have jurisdiction.
2. That the tribunal was not properly constituted.
3. That the tribunal's award was undated and unsigned by some members.
4. That the tribunal acted ultra vires its jurisdiction.

The Interested party and Respondent were served but none filed appearance, reply or attended the hearing. The Applicant filed written submissions through his counsel, C.M Mwebi & co. Advocates, referring the court to the following decided cases.

1. **Patrick Echesa –V- Mumias Land Dispute Tribunal & Anor Kakamega Misc. App. No. 22 of 2009**, where the court referred to the powers of the tribunal under the Land Disputes Tribunal Act and held,

“ This power does not include determination of title to the land. The Tribunal clearly had no jurisdiction to hear the claim by the Interested party. Much less to make the decision it made. It is my finding that the decision of the Tribunal was ultra vires its powers under section 3 (1) of Act 18 of 1990.”

2. **Beatrice M. Marete –V- Meru Dispute Tribunal & 2 others Nyeri C.A. NO. 259 of 2000** [Decision not attached].
3. **Patrick Makokha Sakwa –V- Chairman, Matungu Land Disputes Tribunal & Anor. Kakamega H.C. Misc. App. NO. 118 of 2003** where the court held;

“ The Matungu Land Disputes Tribunal; in its decision dated 22.4.2003 usurped the power of the court in purporting to determined the rights of the parties to the contract of sale of land. The jurisdiction conferred on the Tribunal by Section 3 (1) of Act 18 of 1990 [Land Disputes Tribunal Act] does not include determination of contractual rights in matters of sale of land. The tribunal acted in excess of its jurisdiction.

4. **Nashon Ochieng Mbayi –V- Khwisero Land Disputes Tribunal & 2 others Kakamega H.C. Misc. App. No. 138 of 2006** where the honourable judge had the following to say;

“ To my mind, if any decision making body lacks jurisdiction, any action it undertakes or decision it makes are a nullity. Therefore I cannot see how a judgment entered in accordance with an award which was made by a Tribunal that lacked

jurisdiction can stand.”

The court, having considered the pleadings and submissions filed finds as follows:

1. That the copy of the proceedings before the Amukura Land Disputes Tribunal shows clearly the matter taken before the tribunal by the Interested Party, Moses Orone, was for a portion of land out of South Teso/Apokor/2478. This was a claim for ownership of registered land and clearly outside the jurisdiction of the tribunal which was limited under section 3 (1) of the Land Disputes Tribunal Act (Now repealed) The Tribunal ordered that the Applicant refund Kshs.167,000/= to the Interested Party and in return to get five acres. The said money had been paid under a sale agreement and the Tribunal did not have jurisdiction on rights or obligations of parties to a contract.
2. The copy of the Tribunal Proceedings is signed by only two members, namely Festo Omoding and Sabensia Opolo. Though the name of Alleys Akhudu appears between the other two names, there is no signature next to that name and the court cannot tell whether he was indeed a member of the Tribunal that heard the dispute. Under section 4 (2) of the Land Disputes Tribunal Act, a properly constituted Tribunal should consist of 3 or 5 members. This clearly shows the Tribunal that heard the dispute was not properly constituted and the orders were therefore issued by an illegally and unlawfully constituted tribunal.
3. That the Amukura Land Disputes Tribunal was improperly constituted, exceeded its jurisdiction and issued orders that were beyond its powers.

The above shows the Applicant’s application has merit and is allowed as follows:

- a. That the Amukura Land Disputes Tribunal undated and unnumbered order in respect of land parcel South Teso/Apokor/2478 is hereby called to this court and quashed.
- b. That the Principal Magistrate’s court at Busia is hereby prohibited from executing the decision of Amukura Land Disputes Tribunal adopted in Busia Principal Magistrate’s court Land Dispute case No. 26 of 2010 on 21.5/2010.
- c. The Interested Party to pay the Applicant’s costs.

S. M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 26TH DAY OF MARCH, 2014

IN THE PRESENCE OF;

JUDGE.