



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
MISC CIVIL APPLICATION NO. 45 OF 2009

REPUBLIC.....APPLICANT

AND

1. KWANZA L.D.T COMPRISING OF:-

(a) WAFULA BIBI

(b) HENRY MUNDA.....1ST RESPONDENTS

(c) JACOB INDIAZI

2. THE C.M'S COURT KITALE.....2ND RESPONDENT

3. SHADRACK TARUS & OTHERS.....3RD RESPONDENT

EXPARTE.....KIPRONO TARUS

R U L I N G

The ex-parte applicant vide a Notice of Motion dated 9th June 2009, seeks an order of certiorari to remove into this court and quash the decision of the Kwanza Land Dispute Tribunal (first respondent) dated 27th January, 2009 and confirmed as a judgment of the court by the second respondent on the 3rd march, 2009.

The decision was the resultant of a dispute involving the third respondent and others against the ex-parte applicant. The dispute itself involved the sharing of portions of land belonging to the late Kiptarus Arap Sitienei, father to both the ex-parte applicant and the third respondent.

In effect, the tribunal distributed the portions of land among the beneficiaries of the estate of the late Arap Sitienei with an order that direct transfer of the portions to each of the beneficiaries be effected after succession.

The tribunal thus acknowledged that lawful succession respecting the estate of the deceased had not been done. However, the tribunal went ahead to forward its decision to the magistrate court for it to be adopted as a judgment of the court.

Matters of distribution of the estate of a deceased person fall under the jurisdiction of the Probate and Administration or Succession courts and not Land Disputes Tribunals whose jurisdiction was clearly

defined under s. 3(1) of the now repealed Land Disputes Tribunals Act (Cap 303 A LOK) and was confined to the division of or the determination of boundaries to land including land held in common, a claim to occupy or work land or trespass to land.

It would therefore follow that the tribunal herein exceeded its mandate by purporting to adjudicate on an issue relating to the distribution of the estate of a deceased person. In any event, none of the parties to the dispute had obtained the necessary grant of letters of administration for him or her to lodge a dispute with the tribunal on property belonging to the late Arap Sitienei. None of them had the necessary "Locus standi".

In the upshot, this application is merited such that the objection thereto by the third respondent is hereby overruled for want of merit and substance.

Accordingly, the application is granted to the extent that the material decision or award made by the tribunal and confirmed or adopted as a judgment of the court be removed into this court and be quashed. The ex-parte applicant shall have the costs of the application as against the third respondent only.

Ordered accordingly.

J. R. KARANJA

JUDGE

[Read & signed this 26th day of November, 2014].