

REPUBLIC OF KENYA

High Court at Bungoma

Civil Miscellaneous Application 155 of 2011

REPUBLIC.....RESPONDENT
AND

THE CHAIRMAN NDIVISI LAND DISPUTES TRIBUNAL APPLICANT
AND

ANDREW WANYONYI SIKANGAEXPARTY APPLICANT
US

GLADYS WAMALWA SIKANGA INTERESTED PARTY

RULING

This is an application for judicial review seeking orders of certiorari and prohibition, to quash the decision of the Land Disputes Tribunal of Ndivisi.

The exparte applicant was granted leave on 14th March 2012 to commence these proceedings. The decision sought to be quashed read thus,

“The Land Disputes Tribunal panel recommend that Gladys Namalwa Sikanga be given her 3 acres from parcel land Ndivisi/Mihuu/2451.”

The exparte is aggrieved by this verdict and submit that the tribunal did not have jurisdiction to arbitrate over titled land as the interested parties claim lay in a succession cause. Both parties have filed written submissions for and against the application. I have perused the file and note that this motion is premised on the grounds on the face of it and supporting affidavit of the

exparte applicant.

In my view, the provisions of Order 53 require the applicant to file an affidavit verifying the facts contained in the statement but not a supporting affidavit. In the case of John Ria Fakiri Vs. A.G & Njaha Charles Mwarita and six others, High Court at Mombasa Misc. Civil Application No. 325 of 2006, Justice Ibrahim stated in the case that “it is trite law that once applicant obtains leave, he is only required to file a notice of motion without any affidavit introducing evidentiary material” (emphasis mine). The judge proceeded to strike out the “supporting affidavit”.

In the present application, the applicant has filed a supporting affidavit which like stated above is unprocedural. Further in determining applications for judicial review orders, the court only refers to the decision making process (i.e. whether made without or in excess of jurisdiction) and if the rules of natural justice were followed and not the merits of the decision. By the applicant introducing evidentiary materials is asking this court to go into the merits of the decision. I hope counsel will take note of this although I have decided not to strike out the affidavit because of provisions in article 159 of our constitution.

Having said this, I now turn to look at the substance of the motion. The tribunal having heard the parties reached a verdict recommending that the interested

party be given 3 acres of land from Ndivisi/Mihuu/2451.

Did they act out of jurisdiction granted to them under Section 3 (i) of the Act? The land in question belonged to the exparte applicant and the interested party's deceased father. Letters of administration was taken out by Anna Mulongo Sikanga who is mother and step-mother of exparte applicant and interested party respectively. The tribunal was therefore handling a matter that squarely fall under the law of succession as regards distribution of a deceased estate. To my mind this was not anticipated by the Law to be within their mandate.

I empathize with the status of the interested party as narrated in the proceedings of the tribunal, unfortunately she chose a wrong vehicle to ventilate her rights.

The Ndivisi Land Disputes Tribunal had no jurisdiction to entertain the complaint brought before it and therefore I allow the prayers sought by the exparte applicant by quashing the decision of the tribunal and order in Webuye Land Case No. 20 of 2011 which adopted the award. I make an order that each party shall bear their own costs.

RULING read and delivered in open court this 28th day of January 2013.

A. OMOLLO

JUDGE.