



REPUBLIC OF KENYA

High Court at Bungoma

Miscellaneous Application 188 of 2010

MOSES SIMIYU TAKARA PLAINTIFF
VERSUS

WYCLIFFE JUMA TAKARA 1ST DEFENDANT

ANDREW KHISA TAKARA 2ND DEFENDANT

MARY WANJALA TAKARA 3RD DEFEDANT

RULING

The applicant is seeking Judicial review orders to bring into this court and quash the decision of Nalondo Land Disputes Tribunal read and adopted as judgment of the court on 28th October 2010 vide Bungoma CMC Land Disputes case No. 50 of 2010. He also seeks this court to issue a prohibition order against Nalondo LDT from hearing a matter concerning the subject land parcel No. **E. Bukusu/S. Nalondo/3320**. The application is based on the grounds on the face of it and the affidavit of the exparte applicant annexed.

One of the grounds stated in the application is that the tribunal lacked jurisdiction to arbitrate over a titled land. All the other grounds relate or question the jurisdiction of the tribunal as regards the decision they arrived at. The jurisdiction of the tribunal is given under Sec. 3 (1) of Act No. 18 of 1990. The award set to be quashed read as follows;

“by virtue of the powers conferred upon us by legal notice NO. 6036 of September 1994, we hereby award Mr. Andrew Khisa Takara, Wycliffe Juma Takara, Moses Barasa Takara and Mary Nanjala Takara the full right to own land parcel No. E. Bukusu/S. Nalondo/3320 and direct the objector Moses Simiyu Takara to vacate the land and facilitate the title deed to them.”

From the documents attached to the pleadings, Moses Simiyu Takara is registered owner of the suit land and marked as annexure **MST II**.

The interested party filed an affidavit in reply in opposition to the prayers sought in the notice of motion. The replying affidavit was sworn on 28th December 2010 by Andrew Khisa Takara one of the three interested parties. At paragraph 4 of his affidavit, he swears the exparte applicant holds the suit land as trustee on their behalf. He further avers that the exparte applicant had earlier sold the suit land to Felix Suto Mbaya whom all the family members (exparte applicant & interested parties) had contributed monies and refunded him Kshs. 45,000/=. Subsequently the exparte applicant was granted apparently by the interested parties time to use the land to grow sugar cane for three harvests so as to recover his Kshs. 18,000/= he had contributed in refunding Felix Suto Mbaya. They aver that since they are brothers, the instant application cannot be granted.

The court wishes to point out that the orders sought are not to be granted against the brother but to challenge the decision –making process of the tribunal which is a public body. The interested parties through Mr. Areba filed written submissions summarized to demonstrate that the tribunal acted within their jurisdiction. He also pleaded that the costs if any in case of success of the exparte applicant be waived. The exparte applicant through counsel did not file any written submissions.

Land parcel **E. Bukusu/S. Nalondo/3320** during the entire proceedings of the tribunal was and still is registered in the names of the exparte applicant.

The interested parties claim is based on the trust (beneficial interest by virtue of their being brothers to their exparte applicants, it is not within the jurisdiction of the tribunal to determine whether trust existed or not. The second aspect that the interested parties contributed monies refunded to the initial purchaser does not help their case much as again this brings in a contractual relationship which still ousts the jurisdiction of the tribunal.

The upshot is that the court finds the tribunal acted in excess of its jurisdiction and allow the motion dated 14th December 2010 with the result that the court do hereby issue orders of certiorari removing into this court and quashing the decision of Nalondo LDT read and adopted as judgment on 28th October 2010 in land case No. 50 of 2010 – Bungoma.

On the issue of costs, I take account of the plea of the interested parties and make an order that each party bears its own costs.

RULING DATED, SIGNED, READ and DELIVERED in open court this 11th day of February 2013.

A. OMOLLO

JUDGE.