



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Judicial Review 28 of 2010**

**REPUBLIC .....  
APPLICANT**

**VERSUS**

**THE NAVAKHOLO LAND DISPUTES TRIBUNAL ..... 1<sup>ST</sup>  
RESPONDENT**

**THE PROVINCIAL LAND DISPUTES APPEALS COMMITTEE ..... 2<sup>ND</sup>  
RESPONDENT**

**AND**

**MOHAMMED WESONGA OTUNGA ..... 1<sup>ST</sup> INTERESTED  
PARTY**

**KASSIM WECHULI OPWORA ..... 2<sup>ND</sup> INTERESTED  
PARTY**

**ISSA WAWIRE OPWORA ..... 3<sup>RD</sup> INTERESTED  
PARTY**

**R U L I N G**

In her application dated 7.7.2010 the applicant is seeking an order of certiorari seeking to remove into this court for purposes of being quashed the proceedings of the Navakholo Land Disputes Tribunal dated 22.5.2008 and those of the Provincial Land disputes Appeals Tribunal dated 11.2.2010. Parties agreed to proceed by way of written submissions. Mr. Mukabwa counsel for the applicant submitted that the Tribunals had no mandate to deliberate over the dispute as the land is registered under the Registered Land Act. Further the applicant contends that the Tribunals held that the suit land plot number **BUNYALA/SIDIKHO/129** do revert to the original owner who is now deceased and was the father of the applicant. The respondent's claim was that their late father had interest in the suit land yet they did not obtain letters of administration. The suit land was allocated to the applicant's father in 1967 and the respondent's father died in 1994 thereby making the claim to have been time barred. Counsel relied on

the case of **WAMWEA V DIOCEASE OF MURANG'A REGISTERED TRUSTEES [2003] KLR 389** and that of **WILLY V MUCHUKI & 2 OTHERS [2004] 2 KLR 357**.

The interested parties in their submissions through their advocate submitted that the application is bad in law as it does not satisfy the requirements of **Order LIII rule 2** of the Civil Procedure Rules. An application for leave must be made within six months after the date of the proceedings or such shorter period and application herein was filed out of time. The Navakholo Land Disputes tribunal made its decision on 22.5.2008 and the applicant ought to have filed her application for judicial review six months after that date without waiting for the deliberation of the Appeals Committee. The respondents further contend that no notice was sent to the Deputy Registrar. Counsel relies on the case of **OYOO & 5 OTHERS V SYONGO & 2 OTHERS [2005] 1 KLR 423**.

The proceedings herein show that the dispute involves plot number **BUNYALA/SIDIKHO/129** measuring 4.0 hectares. The interested parties filed the claim before the Navakholo Land Disputes Tribunal. The Tribunal resolved that the suit land should revert to the original owner. The land was transferred to the applicant on 25.11.2003. The Tribunal also directed that the land be sub-divided and the applicant get one acres while the other 9 acres be given to the sons of **OTUNGA OBWORA**. The applicant appealed to the Western Provincial Appeals Tribunal but the appeal was dismissed and the decision of the Navakholo Land Disputes Tribunal was upheld. The ruling of the Appeals Committee was delivered on 11.2.2010.

The applicant herein sought the leave of the court through an application dated 29.6.2010. Leave was granted on the same day and an order issued on 1.7.2010. This application was filed on 7.7.2010. The court stamp appears not to have been changed and it reads 7.6.2010 which could not have been the case as the assessment on the court filing fees as shown on the application was made on 6.7.2010. The filing of the application was done within 21 days after leave had been granted by the court. The interested parties contend that the application for judicial review ought to have been filed within six months from the 22.5.2008. Since the decision of the Navakholo Land Disputes Tribunal was a subject of appeal I do find that that contention is not proper. The appeals committee could have set aside the decision of the Navakholo Land Disputes Tribunal and that would have left nothing to be quashed had the ex-parte applicant filed her application before the determination by the appeals committee. From the 11.2.2010 when the Appeals committee made its decision to the 29.6.2010 when the application for leave was made, a period of six months had not lapsed. The proceedings before the Navakholo Land Disputes Tribunal and those before the Western Provincial Appeals Committee form one series of proceedings. It will not have been possible to quash the proceedings before the Navakholo Tribunal while the appeals committee could have come with a verdict favourable to the applicant.

From the proceedings, it appears that the interested parties' father went to Uganda and when he came back he found the land had been registered in favour of the applicant's father. The interested parties seem to be claiming that the applicant's father was holding the land in trust for their father who was deceased by the time they filed their claim. The effect of the decisions of the two tribunals is that the land which is now registered in the names of the applicant would be sub-divided and the existing title extinguished. The main issue would be whether the tribunal had jurisdiction to deal with the subject of cancelling title and ordering sub-division of a registered title. Under **section 3(1)** of the Land Disputes Tribunals Act No. 18 of 1990 the jurisdiction of the tribunals is limited to:-

**3(1) Subject to this Act, all cases of civil nature involving a dispute as to-**

- a) the division of, or the determination of boundaries to land, including land held in common;**
- b) a claim to occupy or work land; or**
- c) trespass to land;**

**Shall be heard and determined by a Tribunal established under section 4.**

Counsel for the applicant contends that the tribunals were barred from dealing with land registered under the Registered Land Act. **Section 2** of the Land Disputes Act defined land to include land registered under the Registered Land Act and therefore the tribunals were not excluded from dealing with such land. However, in dealing with land registered under the Registered Land Act the tribunals had to limit themselves within the jurisdiction conferred by **section 3** of the now repealed Act. I do find that the decision of the two tribunals was done without jurisdiction. The initial registered owner had died and the applicant had obtained her title. If there was any claim by the interested parties it ought to have been handled by the High Court. The tribunal's decision to nullify a registered title was done without jurisdiction. With regard to the issue of notice to the Deputy Registrar I do find that the same is done during the filing of the application for leave and the judge who granted the leave was satisfied that such a notice had been given. The application for leave was done through a different file, vide judicial review no. 27 of 2010.

In the end I am satisfied that two tribunals exceeded their jurisdiction and their decisions to nullify a registered title cannot be allowed to stand. The application dated 7.7.2010 is hereby granted as prayed. Costs to the applicant.

*Delivered, dated and signed at Kakamega this 7<sup>th</sup> day of February 2013*

**SAID J. CHITEMBWE**

**J U D G E**