



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

JUDICIAL REVIEW NO. 10 OF 2011 (JR)

IN THE MATTER OF AN APPLICATION BY GEOFFREY OUMA WERE THE

LEGAL REPRESENTATIVE OF STEPHEN OUMA THE REGISTERED

PROPRIETOR OF THAT PARCEL OF LAND SAMIA/LUANDA-

MUDOMA/625 FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE DECISION AND FINDINGS OF WESTERN

PROVINCE LAND DISPUTE APPEAL 1999.

AND

IN THE MATTER OF BUSIA SENIOR PRINCIPAL MAGISTRATE LAND

DISPUTE NO. 2 OF 1999.

BETWEEN

GEOFFREY OUMA WERE

VERSUS

JOSEPH ONYANGO OBAYI.

GEOFFREY OUMA WERE

REPUBLICAPPLICANT

VERSUS

1.WESTERN PROVINCIAL LAND DISPUTE APPEAL)

2. BUSIA SENIOR PRINCIPAL MAGISTRATE.....RESPONDENTS.

AND

ALLOYS AJARI WERE.....INTERESTED PARTY

RULING.

By Notice of Motion dated 23rd March, 2011, the exparte applicant namely Geoffrey Ouma Were applied for three prayers.

1. An order of certiorari to issue against the Western Provincial Land Dispute Appeal in respect of land parcel Samia/Luanda Mudoma/625 together with the proceedings and subsequent adoption and decision in Busia Principal Magistrate's in Land case No. 2 of 1999.
2. An order prohibition to issue against the Western Provincial Land Dispute Appeal and the Senior Principal Magistrate's court Busia from enforcing, executing, or purporting to adjudicate over any claim in respect of the said land by the interested party or any other person.
3. An order of the cost of this application to paid by the interested party.

Filed together with this application is a verifying affidavit and supporting affidavit by the said Geoffrey Ouma Were deponed on 23rd March, 2011. Annexed to this affidavit is a copy of a grant ad Litem, Court order dated 15th September, 2010 and tribunal proceedings forwarded by the District Officer, Funyula in February, 1999.

M/S. Balongo& company Advocates represented the exparte applicants while Obwoye Onsongo& company Advocates represented the interested party. Both counsel filed written submissions. The applicant's counsel in his submissions referred the court to ***REPUBLIC –VERSUS SOY DECISION LAND DISPUTES TRIBUNAL MIS. CIVIL APPL. NO 302 OF 2003*** and asked the court to quash the decision of the Western Province land Dispute appeal committee. The basis of his submissions is that the land in question was registered under the then Registered Land Act(now repealed by Act No. 3 of 2012, and that the land relates to an estate of a deceased person. Therefore the tribunal did not have jurisdiction to deal with the claim relating to that land. For the interested party counsel referred to the following two cases;

- ***REPUBLIC VS MINISTER FOR LANDS AND SETTLEMENT AND OTHERS (NAIROBI HC MISC.APPLICATION NO.572 OF 2004***
- ***COMMISSIONER GENERAL , KENYA REVENUE AUTHORITY VS SILVANO OWAKI T/A MIRENGA FILLING STATION, KSM CA 45 OF 2000***

Counsel also took issue with whether or not leave to file this application had been applied for and obtained and submitted that the decision of the tribunal was within their power and submitted that the application should be dismissed with costs.

The court has considered the pleadings and the submissions by the counsel and find as follows;

1. That leave to file judicial review application was applied for through chamber summons 23rd February, 2011 and leave granted on 16th March, 2011.
2. That the tribunal proceedings documents annexed to the application appear to have been the proceedings and ruling from Funyula land Dispute tribunal which ordered that the case be dismissed, that the sisal which were uprooted be replaced and that the Liguru to assist in replacing the sisal and advised that the brothers do leave in peace. The Tribunal also advised that the sons of Mzee Stephen Ouma do file a succession cause in relation to Samia/Luanda Mudoma/625.
3. That there is no document from the Western Provincial Appeal Tribunal that is attached to the application and terms of Order 53 Rule 7(1) of Civil Procedure Rules the applicant cannot question the validity of such an order that has not been attached.
4. The decision of the Funyula Land Disputes Tribunal referred hereinabove did not in any way direct the cancellation of the title of Land parcel Samia/Luanda Mudoma/625. The tribunal made reference to the land in their advice to the sons of the registered owner who was reportedly

- deceased to file a succession cause.
5. The decision therefore of the Funyula Land Dispute Tribunal related only to the replacement of the boundary marks which was within the powers granted to the tribunal under section 3 (1) of the Land Dispute Tribunal Act (Now repealed)
 6. That even though, the decision from Western Provincial Appeals Tribunal has not been annexed, both parties are in agreement from the papers filed hearing that the appeal was dismissed. This clearly shows that the position returned to the decision of the Funyula Land Disputes Tribunal.

From the foregoing, it is quite clear the Funyula land Dispute tribunal acted within their powers and the appeal that had been launched before the Western Provincial Appeals Tribunal was dismissed effectively confirming the decision of the former. The court therefore finds that application dated 23rd March, 2011 by the exparte applicant dated has no merits and the same is dismissed with costs.

It is ordered.

S. M. KIBUNJA

JUDGE.

30TH MAY, 2013.

REPUBLIC OF KENYA

IN HIGH COURT OF KENYA AT BUSIA.

REVIEW CASE NO. 9 OF 2011.

IN THE MATTER OF THE REGISTERED LAND ACT.

AND

IN THE MATTER OF AND APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF LR NO. SOUTH TESO/ANGOROMOR/6168 OVER BUSIA SPM CC.

LAND CASE NO. 76 OF 2010.

BETWEEN

REPUBLICAPPLICANT

V E R S U S

CHAKOL LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

LINET OOKO OGOLLA.....INTERESTED PARTY

AND

IN THE MATTER OF JOSEPH OMONDI ONYANGO.....APPLICANT.

RULING.

JOSEPH OMONDI ONYANGO, through his advocates M/S.Ashioya& company advocates filed a notice of motion dated 5th April, 2011, for an order of certiorari against the decision of Chakol Land Disputes Tribunal over land parcel South Teso/Angoromo/6168 and costs. The interested party,LinetOokoOgolla through her advocates M/S. Wanyama& company advocates opposed the application and filed a replying affidavit sworn on 12th October, 2011. Both counsel filed written submissions. In the submissions filed by the interested party's advocate dated 22nd April, 2013, the interested party concedes to issuance of the orders of certiorari. She only submitted on the issue of costs stating that each party should meet their own costs so as to promote reconciliation among the parties who are close relatives.

The court has carefully considered the submissions by counsel and noted that the interested party has agreed that the orders of certiorari be issued. This is an admission that the applicant's application has merit and ordinarily the successful party in a civil case is entitled to costs. However, in this particular instance, the court has noted the nature of the claim the interested party had taken to the tribunal which appears to be based on beneficial interest. It is likely that the interested party may still pursue her claim in a new matter even after the orders in this case are issued. With this in mind and considering the relationship the two parties have, I find this is an appropriate case where each party takes care of their own costs.

It is therefore ordered as follows:

- a. That an order of certiorari do and is hereby issued calling into this court and quashing the decision of Chakol Land Dispute Tribunal on Land parcel South Teso/Angoromo/6168 dated 7th July, 2010 and adopted by the Senior Principal Magistrate's court in Land case No.76 of 2010 on 23rd September, 2010.
- b. Each party bears their own cost.

It is so ordered.

S. M. KIBUNJA.

JUDGE.

30TH MAY, 2013.