



**REPUBLIC OF KENYA**

**High Court at Busia**

**Judicial Review 21 of 2012**

**REPUBLIC .....APPLICANT.**

**=VERSUS=**

**MATAYO'S LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDET**

**BUSIA CHIEF MAGISTRATE'S COURT .....2<sup>ND</sup> RESPONDENT**

**JOSEPH OMONDI MUHEYA .....INTERESTED PARTY.**

**J U D G M E N T.**

The Exparte Applicant **FREDRICK OKOTH OSIKO** through M/S. Maloba & company Advocates filed the notice of motion dated 21.06.2012 for an order of certiorari to call into this court and quash the proceeding and decision of Matayos Land Disputes Tribunal in respect of L.R. Bukhayo/Matayos/1538 in case No. 4 of 2011 read and adopted in Busia CMC. Land case No. 89 of 2011 on 13.11.2011 plus costs. The application is based on the facts set out in the statutory statement and verifying affidavit of 21.06.2012.

Even though no copy of the leave to apply for the substantive application was traced in this file, I called for Busia H.C. Misc. Application No. 6 of 2012 and Busia CMC. Land case No. 89 of 2011 and was able to see the order for the leave granted on 12.06.2012. The application herein was filed on 21.06.2012 and therefore within time. Some of the facts relied on in the application are:

1. That the suit Land Bukhayo/Matayos/1538 is registered in the names of Wilfrida Makokha Siko who died on 12.07.1993 as confirmed on the copy of certificate of death annexed. A copy of the official search also confirms the registration .
2. That no grant has been obtained in relation to the estate of Wilfrida Makokha Siko and he was wrongly enjoined as a defendant.
3. That the land being registered land, the tribunal lacked jurisdiction.
4. The tribunal was wrongly constituted.

The interested party, Joseph Omondi Muhanya, opposed the application and filed a replying affidavit sworn on 04.01.2013 and avers on the following facts among others:-

1. That the tribunal had the powers to award him 3 acres as it was within its powers.

2. That Bukhayo/Matayos/1538 belonged to Wilfrida Makokha as trustee of the estate of Muhanya and she had given him, as one of the beneficiaries, vacant possession.

The record shows the powers of Abachi –Ndombi & company Advocates filed notice of appointment for the interested party on 14.01.2013 but the interested party is the one who filed his submission dated 15.03.2013. The Applicant counsel had on 18.2.2013 filed their submission dated 04.02.2013.

I have carefully considered the pleadings, affidavits and written submissions and find the following is not disputed:-

1. That Land parcel Bukhayo/Matayos/1538 was at all material times registered in the names of Wilfrida Makokha Siko.
2. That the interested party is the one that filed the claim before Matayos Land Disputes Tribunal on 22.02.2011 over land parcel Bukhayo/Matayos/1538.

I have perused the tribunal proceedings and note that the defendants are indicated as Wilfrida Makokha Siko (deceased) and Fredrick Okokhi Siko. This clearly shows there was disclosure one of the person's the interested party was claiming from was already deceased. The court wonders how the deceased was served with the tribunal processes. That aside, the law of succession Act Cap 160 of Laws of Kenya, requires a succession cause to be filed in court before the estate of a deceased person can be distributed. The tribunal had no powers to deal with land that was registered in the names of a deceased person like they did in this case. The tribunal went ahead to award interested party 3 acres from Bukhayo/Matayos/1538 hence assuming powers beyond those given by S.3 (1) of Land Disputes Tribunal No. 18 of 1990 now repealed under S.31 of Environment and Land court Act No. 19 of 2011.

As submitted by Applicant Counsel Claims on registered Land are required under S.159 of Registered Land Act (Now repealed under S.106 of Land Registration Act No. 3 of 2012) to be heard in court. Land parcel Bukhayo/Matayos/1538 was registered as confirmed by the copy of the official search and the tribunal did not have jurisdiction to issue the orders/award it did.

Under S. 4 of the Land disputes Tribunal Act (Now Repealed) membership of the tribunal is prescribed as chairman plus 2 or 4 elders. This means each tribunal should be having 3 or five members but the tribunal that dealt with this claim had Chairman, 5 members and Secretary which is beyond those prescribed.

For the reasons shown above, the Matayos Land Disputes Tribunal decision over Land parcel Bukhayo/Matayos/1538 was beyond its powers and hence a nullity abinitio. The Applicants application dated 21.06.2012 is hereby allowed in terms of prayer 1 with costs.

**S. KIBUNJA,**

**JUDGE.**

**13<sup>TH</sup> MAY, 2013.**