



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

MISC. APP/JUDICIAL REVIEW NO. 8 OF 2012.

IN THE MATTER OF AN APPLICATION BY WENSLAUS ETIARU FOR AN ORDER OF JUDICIAL REVIEW –CERTIORARI PURSANT TO THE CIVIL PROCEDURE ACT & THE RULES 2010 AND THE LAW REFOR ACT.

AND

IN THE MATTER OF THE AWARD OF TESTO SOUTH DISTRICT – AMUKURA LAND DISPUTE TRIBUNAL UNNUMBERED CASE, UNDATED DECISION, CONCERNING LAND PARCEL L.R.NO. SOUTH TESO/APOKOR/1215.

AND

IN THE MATTER OF READING ADPOTION AND ENFORCEMENT PROCEEDINGS IN BUSIA CM COURT LAND DISPUTE CASE NO. 101 OF 2011 READ ON 9.12.2011.

AND

IN THE MATTER OF THE REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN TESO SOUTH DISTRICT AMUKURA

LANDDISPUTE TRIBUNAL.....1ST RESPONDENT.

THE CHIEF MAGISTRATE BUSIA COURT.....2ND RESPONDENT

AND

JULIANA TATA IKOLONGINTERESTED PARTY.

WENSLAUS ETIARU – EXPARTE APPLICANT.

R U L I N G.

The application by Notice of Motion dated 17th February, 2012 was filed by Wenslaus Etiaru, through Gabriel Fwaya Advocate, and is for an order of certiorari to call to this court and quash the decision of South Teso District Amukura Land Dispute Tribunal decision in respect of land parcel No. South Teso/Apokor/1215 which was subsequently read adopted in Busia CMC Land case No. 101 of 2011.

The applicant filed a statutory statement and affidavit verifying the facts both dated 16th December, 2011. The application is based on the following grounds:

1. That the tribunal lacked jurisdiction to entertain a claim for subdivision, transfer and ownership of registered land.
2. The tribunal acted ultra vires in ordering the sub division and to the interested party of portion of land parcel No. south Teso/Apokor/1215.
3. The party's lacked capacity to sue and to be sued.
4. The claim was statutory time barred.
5. The tribunal proceedings and decision are illegal and a nullity ab initio.

The respondents and the interested party did not file any replying papers. Counsel for the applicant filed their written submissions dated 17th April, 2012 on the 29th May, 2012. The court has carefully considered the submissions and the pleadings herein and find as follows:

1. That the claim taken by Juliana Tata Ikolong to the South Teso District Amukura Land Dispute Tribunal was for a portion of land from a registered parcel No. SouthTeso/ Apokor/1215. The Tribunal after hearing the parties ordered as follows:

“The claimant Juliana Tata awarded 2 Ha. out of parcel No.SouthTeso/Apokor/1215 also the respondents three Wenselaus Etaru, David Etaru and Tom Ekisa to pay costs to Juliana Tata.”

2. That it is clear the orders of the tribunal to be effected would require the land to be sub division and a portion of 2 Ha. thereof Transferred to Juliana Tata. This would be beyond the powers of the tribunal which was limited as shown in section 3 (1) of the Land Disputes Tribunal Act.
3. That from the proceedings before the tribunal it is apparent that the claimant Juliana Tata, was claiming the land on behalf of her late husband Lazaro Ikolong'o who in 2001. The land she was claiming a portion from was registered in the names of Etoro Ogema who is also reportedly deceased. Neither Juliana Tata nor the people she claimed the land from namely Wenselaus Etaru, David Etaru and Tom Ekisa Etaru had been appointed as administrators of the respective estates.

From the foregoing, the decision made by the tribunal was in excess of its statutory power as shown above and the Applicant's application dated 17th February, 2012 is allowed as prayed with costs.

S. M. KIBUNJA,

JUDGE.

19TH JUNE, 2013.