



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUSIA.**

**JUDICIAL REVIEW NO. 3 OF 2009.**

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

**VERSUS**

**FUNYAL LAND DISPUTE. )**

**PM'S COURT AT BUSIA ).....RESPONDENTS.**

**SYLVESTER OKUMU OKELLO.)**

**EDWARD AWORI OSALO ).....INTERESTED PARTY**

**RULING.**

The Exparte Applicant, namely **SYLVESTER OKUMU OKELLO** through M/S. Maloba & co. Advocates filed the notice of motion dated 6<sup>th</sup> November, 2009 for an order of certiorari to call into this court and quash the proceedings and order in Busia PMC. Land case NO.54 of 2008 adopting the award of Funyula Land Disputes Tribunal on 2<sup>nd</sup> September, 2008 plus costs.

The interested party, namely Edward Awori Osalo, through M/S. Wanyama & co. Advocates filed a replying affidavit dated 15<sup>th</sup> December, 2010 opposing the application.

By consent dated 29<sup>th</sup> February, 2012, counsel agreed to file written submissions. The applicant's counsel filed their written submissions dated 13<sup>th</sup> March, 2012 on the same date while interested party's counsel filed theirs dated 29<sup>th</sup> May, 2012 on 12<sup>th</sup> June, 2012.

Counsel then appeared before the court on 13<sup>th</sup> May, 2013 and disclosed that the interested party had conceded to the application and all that remained was for the court to make a ruling on costs.

I have carefully considered the written submissions by both counsel and the pleadings in the file and it is apparent there has been several cases some decided and at least one pending in Nairobi between the parties herein over the land subject matter of this case. The interested party was aware of those other cases when he initiated the claim before the Funyula Land Disputes Tribunal finally culminating with this case. It was the interested party's action of going to lodge his claim in the wrong forum that made the Exparte applicant file the current application to which the interested party has conceded though late in the day. The Exparte party Applicant incurred expenses and the same should be paid by the interested party.

The Exparte Applicant's application dated 6<sup>th</sup> November, 2009 is allowed and an order of certiorari issued calling the Funyula Land Disputes Tribunal order in case No. 15 of 2008 relating to Samia/Bugongo/245 of 7<sup>th</sup> August, 2008 and adopted by Busia PMC. Land case No. 54 of 2008 on 2<sup>nd</sup> September, 2008 in to this court and quashing the same. The Exparte applicant costs will be met by the interested party.

**S. M. KIBUNJA,**

**JUDGE.**

13<sup>TH</sup> JUNE, 2013.