



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. APPLICATION NO. 7 OF 2010.

IN THE MATTER OF AN APPLICATION BY MARTIN JUMA AND JACK WANYAMA
MANGOLI

FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ARBITRATION CASE NO. 3 OF 2009
AND WEBUYE SENIOR RESIDENTS MAGISTRATES COURT LAND CASE NO. 16 OF 2009

AND ADOPTION ORDER THEREIN ISSUES ON 4TH DAY OF SEPTEMBER 2009

AND

IN THE MATTER OF THE LAND REFORM ACT CHAPTER 26 LAWS OF KENYA

BETWEEN

REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN NDIVISI

LAND DISPUTES TRIBUNAL RESPONDENT

MARTIN JUMA

JACK WANYAMA MANGOLI EXPARTE APPLICANT

TRUDEA NASWA..... INTERESTED PARTY

JUDGMENT

The exparte applicants by notice of motion dated 17th May 2012 sought orders;

1. That the decision of Ndivisi land Disputes tribunal case no. 3 of 2009 over L.R. No. Ndivisi/Makuselwa/1451 and 1634 and the judgment and orders of the SRMC Webuye in Misc. application no. 16 of 2009 dated 4th September 2009 be removed into this court, reviewed and quashed.
2. That Ndivisi division land disputes tribunal be prohibited from arbitrating a claim lodged by the

- complainant directly or indirectly over the same parcel of land again.
3. Costs of this application be provided for.

The applicant was granted leave to commence judicial review proceedings on 7th May 2012.

The proceedings before the Ndivisi Land Disputes tribunal reveal the complaint was about sharing the estate of deceased Mangoli Wachie. The interested party was the sister to the ex parte applicants. The land in question was their father's. Their father had 5 wives and the interested party was from the first house as an only child.

From the verdict of the tribunal it seemed the land had been transferred to Martin Juma's name from his father. The tribunal stated thus in their verdict;

“Mrs. Trudea Naswa Mukhevi the complainant has the right to get a share of two (2) acres of land from her father's land of 47 acres which is a share of her mother, this to come from the two numbers in MARTIN JUMA'S name i.e. ND/MK/1451 & 1634.”

The ex parte applicants submit this matter was beyond the jurisdiction of the Tribunal. Mr. Omukunda submitted that the two parcels do not exist as the land ND/MK/816 is registered in the names of GILBERT WACHIE MANGOLI – deceased. However, this may not be true as the search referred to and annexed in the replying affidavit of the interested party clearly shows L.R. 816 was closed on subdivision on 19th March 2004 to give a new number 1449 – 1461.

Mr. Omukunda also submitted the tribunal had no business dealing with matters of succession.

The interested party on her part said her Father had given her two(2) acres and Martin has refused to give her the two acres. She said the ex parte applicants had lied they would give her land.

It is unfortunate the ex parte applicants have disinherited the interested party of her small share of two acres from her father's land. She ought to have filed her claim in the high court to establish her claim. The tribunal does not have capacity to make an order that results into cancellation of applicants titles. They exceeded the powers given to them by Section 3 (1) of the land Disputes tribunal Act.

Their award which was adopted by Webuye SRMCC No. 16 of 2009 on the 4th September 2009 is called into this court and is hereby quashed.

There is a second prayer seeking an order prohibiting the Ndivisi Land disputes tribunal from hearing this matter again. This is overtaken as the tribunal has since been disbanded.

I order that each party bear their own costs.

JUDGMENT DATED, DELIVERED AND SIGNED In open court this 12th day of June 2013.

A. OMOLLO

JUDGE