



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

MISCELLANEOUS CIVIL APPLICATION NO. 100 OF 2011

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION BY ABSOLOM NAMANI WASIKE & JUSTO

OUNDO OKUMU AND OTHERS FOR ORDERS OF CERTIORARI

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

BUSIA MUNICIPALITY LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

RISPA ACHIENO WANYAMA.....INTERESTED PARTY

AND

ABSOLOM NAMANI WASIKE.....1ST EXPARTE APPLICANT

JUSTO OUNDO OKUMU.....2ND EXPARTE APPLICANT

R U L I N G

The genesis of this application can be traced back to a dispute in the Busia Municipality Land Disputes Tribunal. It was registered as Case No.14 of 2010. The dispute was between Rispa Achiemo Wanyama as the claimant and Absolom Namani Wasike, Justo Oundo Okumu and Manase Were Malaba as the respondents. The subject of the dispute was Land Parcels No. BUKHAYO/ MUNDIKA/6271 & 6273. The tribunal considered the evidence placed before it on behalf of the parties made its award on 6th January 2011. In its decision, the tribunal stated that:

1. *“.....The District surveyor assisted by the Municipality Tribunal court elders are to extract land approximately 4 plots from parcel Bukhayo/ Mundika/6273 and 2 plots from parcel no. Bukhayo/ Mundika/271.*
2. *The remaining land in parcel Bukhayo/Mundika/6271 should be registered in the names of*

- Justo Oundo Okumu.*
3. *The newly extracted plots to be registered in the names of the Plaintiff – Rispa Achieno Wanyama.*
 4. *The District Land Registrar to remove the caution inserted in the land Bukhayo/Mundika/6273 to enable the exercise.”*

Arising from that award, the 1st and 2nd Exparte Applicants filed an application for leave to apply for the Judicial Review orders of certiorari pursuant to **Order 53 Rule 1** of the **Civil Procedure Rules**. The main issue for determination is the question whether the interested party had *locus standi* to claim land on behalf of her deceased husband ZABLON WANYAMA ACHABA, and secondly, whether the Busia Municipality Land Tribunal acted within its jurisdiction.

This court considered rival submissions of counsels for the parties and is satisfied that there is prima facie evidence of an arguable case. I accordingly grant the applicant leave to file an application for judicial review for the orders certiorari. The grant of leave shall operate to stay the execution of the award of the tribunal. The Exparte Applicants are ordered to file and serve the substantive motion within twenty-one (21) days of the delivery of this ruling. The costs of the application for leave shall abide the outcome of the substantive motion.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED AT BUSIA THIS 31ST DAY OF JULY 2013.

F. TUIYOT

JUDGE