



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

MISC. APP. NO. 12 OF 2011.

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT

AND

IN THE MATTER OF THE REGISTERED LANDS ACT

AND

IN THE MATTER OF THE LAW REFORM ACT.

BETWEEN

REPUBLICAPPLICANT

VERSUS

- 1. AGNETA ODATO**
- 2. THE CHAIRMAN**

CHAKOL LAND DISPUTES TRIBUNALRESPONDENTS

EX-PARTE..... STEPHEN O. KARANI.

J U D G M E N T.

Through the notice of motion dated 13th April, 2011, the exparte applicant, **STEPHEN O. KARANI**, prays for the this honourable court to issue an order of certiorari to call to this court the award made by Chakol Land Disputes Tribunal and quash it. He also prays for costs. The application is based on two grounds as summarized herein below;

1. That the tribunal acted ultra vires their powers by ordering the cancellation of the title.
2. That the tribunal was biased as it omitted the evidence of Consolata Okitwi Omatete, who had testified as the only heir to the deceased.

The application is opposed by the interested party, Agneta Odato, who filed a replying affidavit sworn on 7th June, 2011. She among others state as follows;

1. That her late husband got the land from clan members after helping in the burial arrangements of one Omadebe Odikor by giving Kshs.6, 000/=, a bull and a ram.
2. That Stephen O. Karani secretly filed a Succession Cause claiming he was son of the deceased while he was only a purchaser.
3. That when the Ex parte applicant bought the land, her portion had already been demarcated and physical boundaries were visible.

Mr. Onsongo & M/s Maloba advocates for the applicant and the interested party respectively, made written submissions. Having considered the contents of the affidavits filed herein and the submissions by counsel, the court finds as follows;

1. That the claim the interested party took to the Chakol Land Disputes Tribunal, was a claim for land as clearly shown in the first paragraph of the tribunal proceedings.
2. The Chakol Land Disputes Tribunal, in its ruling contained on the last page of the proceedings, awarded the interested party a portion of land out of land parcel South Teso/Chakol/832.
3. That the jurisdiction of the tribunal was as limited under section 3 (1) of the Land Dispute Tribunal Act (Now repealed) which did not include power to determine issues of land ownership.
4. That the interested party's claim is on behalf of her deceased husband and there is nothing to show that she had been appointed as the legal representative of the estate of her husband in accordance with the Law of Succession Act Cap 160 of the Laws of Kenya.
5. That the ex-parte applicant was registered as the owner of land parcel South Teso/Chakol/832 through orders obtained in Busia HC.P&A No.97 of 1999 and any party interested in challenging the outcome thereof should file the appropriate application in the said Succession Cause.

From the foregoing, the applicant has shown that the Chakol Land Dispute Tribunal dealt with a land claim which was outside their powers and issued an order that they did not have jurisdiction to issue. The ex parte applicant has also shown that the interested party did not have capacity to lodge the claim on behalf of the estate of her husband when she was not duly appointed as a legal representative in accordance with the provisions of the law. The application is therefore granted in terms of prayers (a) (b) and (c).

It is so ordered.

S.M. KIBUNJA.

JUDGE.

Delivered on 12th day of July, 2013.