



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**MISC. APPLICATION CASE NO. 290 OF 2005**

**IN THE MATTER OF AN APPLICATION BY SHEM NALIANYA SIBITALI**

**FOR JUDICIAL REVIEW ORDERS OF CERTIORARI**

**AND**

**IN THE OF THE DECISION OF THE LAND DISPUTES TRIBUNAL**

**ACT NO. 18 OF 1990 IN THE KIMILILI LDT NO. 10 OF 2004**

**AND KIMILILI RESIDENT MAGISTRATE'S COURT LAND CASE NO. 38 OF 2005 MADE ON  
13/9/2005**

**BETWEEN**

**REPUBLIC..... APPLICANT**

**AND**

**THE CHAIRMAN KIMILILI L.D TRIBUNAL.....RESPONDENT**

**EXPARTE**

**SHEM NALIANYA SIBITALI.....EX-PARTE APPLICANT**

VERSUS

WENSILOUS MALABA SIAKORA .....INTERESTED PARTY

**JUDGMENT**

[A]. By this Judicial Review application, the exparte applicants being unhappy with the decision of Kimilili Land Disputes Tribunal seeks for orders:

- That the proceedings, decision and award of Kimilili Land Disputes Tribunal in claim No. Kimilili Land Disputes Tribunal/10/2004 read as judgment of the court on 13th September 2005 vide Kimilili RMC land case No. 28 of 2005 be removed into the honourable court and quashed.
- The costs of this application be provided for.

[B]. The Tribunal after hearing the evidence of the parties read this award:

**“In view of the above observations this Tribunal rules that Kimilili/Kimilili/1268 should be registered in the name of Wensilous Malaba erasing the name of Shem Nalianya from the register.**

**The Land Registrar to ammend the register of Kimilili/Kimilili/1268 to read 9m by 31 m which is half plot in the name of Samuel W. Wamalwa in order to liaison with the ground measurements”**

The exparte applicant submits the Land Disputes Tribunal had no jurisdiction to adjudicate on land dispute touching on title. He also stated on the grounds that the interested party's claim is barred by Limitation of Actions Act.

[C]. The interested party opposed the application. He filed a replying affidavit. In it he averred that the exparte applicant owned land title Kimilili/Kimilili/1266 in which he has no claim. He urged the court to order title deed for Kimilili/Kimilili/1267 to read his name and a new acreage of 0.027 ha.

[D]. The exparte applicant annexed to his supporting affidavit a copy of title deed for L.R. Kimilili/Kimilili/1267 in his names (Sem Nalianya Sibitali) issued on 31st July 2003. The dispute before the Tribunal was lodged in 2004. From the proceedings, the dispute commenced on 2nd November 2004 and award reached on 30th November 2004. It was read as an order of the court on 13th September 2005. It therefore follows that the exparte applicant was the registered owner of the suit parcel at the time of hearing of the dispute before Kimilili Land Disputes Tribunal.

[E]. The Land Disputes Tribunal derived its jurisdiction from the Section 3(1) of the Land Disputes Tribunal Act (repealed) under the provisions of this section, they are not given powers to make awards that result in alteration of the register or cancellation of title. By the reaching of the award they ordered for both the cancellation of title in ordering rectification of the register to have the name of Wensilous Malaba replace Shem Nalianya from the register. They also ordered rectification of register by changing the size of Kimilili/Kimilili/1268 to read 9m by 31m without any the report of the Government Surveyor. The power to cancel title or rectify the register vests in the High Court only. The Tribunal thus exceeded their mandate by virtue of their decision/award. In any event, the Interested Parties claim was based on contract of sale of land which the Tribunal had no capacity to enforce.

[F]. The other mistake the Tribunal did was to introduce land parcel Kimilili/Kimilili/1268 in their award instead of Kimilili/Kimilili/1267 which was the subject of the dispute. However even if this was a typographical error, they would still have exceeded their mandate because the correction of the numbers would not change the effect of their award/decision.

[G]. Consequently I allow the application, I call into this court the decision of Kimilili Land Disputes Tribunal Land case No.10 of 2004 read as the judgment of the court in Kimilili RMC land case No. 38

of 2005 and set it aside/quashed. I order that each party shall bear their own costs.

**JUDGMENT DATED, DELIVERED AND SIGNED** In open court this 29th day of August 2013.

**A. OMOLLO**

**JUDGE**