



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. APPLICATION CASE NO. 33 OF 2011

**IN THE MATTER OF AN APPLICATION BY EDWARD OMARI SITOKI AND GEORGE
SIMIYU SITOKI FOR LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW**

AND

IN THE MATTER OF THE REGISTERED LAND ACT CHAPTER 300 LAWS OF KENYA

AND

IN THE MATTER OF THE LAND DISPUTES ACT NO. 18 OF 1990

AND

**IN THE MATTER OF THE WESTERN PROVINCIAL DISPUTE APPEALS TRIBUNAL AND
BUNGOMA CHIEF MAGISTRATE'S COURT LAND DISPUTES**

CASE NO. 43 OF 2010

AND

IN THE MATTER OF BOKOLI/MISIKHU/579

AND

IN THE MATTER OF THE CIVIL PROCEDURE ACT & CIVIL PROCEDURE RULES 2010

AND IN THE MATTER OF THE LAW REFORM ACT CHAPTER 26 LAWS OF KENYA

BETWEEN

REPUBLIC..... APPLICANTS

VERSUS

**THE CHAIRMAN PROVINCIAL LAND DISPUTES APPEALS TRIBUNAL WESTERN
PROVINCE.....RESPONDENT**

EXPARTE

EDWARD OMAR . SITOK

GEORGE SIMIYU SITOKI..... APPLICANTS

VERSUS

ERASTUS WANJALA WECHULI..... INTERESTED PARTY

JUDGMENT

The ex parte applicants have brought a Judicial Review application under Order 53 Rule 3 of the Civil Procedure Rules and Section 8(2) & 10 of the Law Reform Act Cap 26 of Laws of Kenya. The application is seeking orders of certiorari to move into this court and quash the decision of the Western Provincial Land Disputes Tribunal Appeals Committee adopted as judgment on the 24th September 2010 in Bungoma Chief Magistrate's court Land case No. 43 of 2010. They also prayed for costs of the suit.

This court notes from the annexed proceedings of the Appeals Tribunal that the 1st ex parte applicant, Edward Omari Sitoki who was listed as appellant No. 2 sought to withdraw from the proceedings. These were his prayers before the Appeals Tribunal,

- ***"Although I was listed as the 2nd appellant, I have decided to withdraw myself from the case for the following reasons***

(a). I was not present when the parties signed their land sale agreements to be able to participate.

(b). The case does not concern me and to support my evidence, I have already filed my withdrawal letter to this court.

(c). The request by the appellant Edward Omari Sitoki was granted after the parties accepted the request."

During the hearing before Webuye district Land Disputes Tribunal, although only George Simiyu Sitoki was listed as the complainant. Edward testified and during cross-examination by the interested party he alleged he was giving evidence as a complainant. The District Tribunal's finding also referred to George Simiyu as the only complainant. Why have I gone into these details? I find as a fact that the 1st ex parte applicant Edward Omar Sitoki having not participated in the proceedings before the Appeals Tribunal is not entitled to the orders of Judicial review seeking to challenge the decision reached by the Appeals Tribunal. He had on his own volition withdrew from the said proceedings. If the court were to find that he was a complainant in the proceedings before the Webuye Land Disputes Tribunal hence his basis for challenging that decision, then his application for judicial review is obviously outside the 6 months period. The Webuye District Land Disputes Tribunal decision was reached earlier than 13th May 2010, which date the appeal was heard. The application for leave to apply for orders of Judicial review was filed on 23rd March 2011. Between May 2010 and March 2011 is close to 11 months. My finding in respect to the prayers sought by the 1st ex parte applicant is therefore without any basis, an afterthought and is dismissed.

As regards the limb of prayers by the 2nd ex parte applicant George Simiyu Sitoki, this court seeks to find if Western Provincial Appeals Tribunal exceeded its mandate to warrant the application to be allowed. The Appeals Tribunal upheld the decision of the Webuye District Land Disputes Tribunal. The district Tribunal after hearing the dispute made an award which stated thus ***"The Tribunal court has ruled that the objector Erastus Wanjala Wechuli to get his portion of land measuring 3.2 acres from***

Bokoli/Misikhu/579”

From the reading of the proceedings and award, it means to execute the award title to land ***Bokoli/Misikhu/579*** would be subdivided to create title for the 3.2 acres given to the Objector (Interested party). The Interested Party acquired this land by way of sale therefore a contract was created between the 2nd exparte applicant and the interested party. The Tribunal is not given jurisdiction to deal with issues arising from contracts. In paragraph 3 of their finding, they refer to an agreement and the 2nd exparte applicant signing for receipts of payment of the last installment.

I have also considered the submissions of the rival parties. ***Mohammed Ibrahim J (as he then was) in the case of Misc. Civ. Application between R. Vs. chairman Keiyo Division Land disputes Tribunal exparte Tabyotin Kabon Ego Eldoret HCC NO. 43 of 2006 at page 4*** found that the interested party's claim is one of a beneficiary to the estate of the deceased hence the tribunal did not have jurisdiction to adjudicate on it. In the instant case, the interested party's claim would lie in a claim for adverse possession; except in this case, it is the exparte applicants who commenced proceedings before the Tribunal. The upshot of my finding is the Tribunal exceeded the mandate given to it under Section 3 (1) of the Act when adjudicating on a cause of action arising from a contract.

Consequently I call into this court the decision of the Western Provincial Land Disputes Appeals Tribunal adopted as a judgment of this court on 24th September 2010 vide Bungoma CM land case No. 43 of 2010 and quash it. The 2nd exparte applicant is the one who commenced the proceedings before the Tribunal so I will not condemn the Interested party to pay him costs. I make an order that each party to bear their own costs.

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

A. OMOLLO

JUDGE.