



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA

Judicial Review No. 5 Of 2012

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE AMAGORO LAND DISPUTES TRIBUNAL

CASE NO. 6 OF 2011

AND

IN THE MATTER OF LAND PARCEL NO. NORTH TESO/KOCHOLIA/397

AND

**IN THE MATTER OF THE BUSIA CHIEF MAGISTRATE'S COURT LAND DISPUTES CASE
NO. 123 OF 2011**

BETWEEN

PETER OKIRING SAUSAU.....APPLICANT

VERSUS

THE CHAIRMAN AMAGORO LAND

DISPUTES TRIBUNAL.....RESPONDENT

AND

CHARLES IPEKET SAUSAU.....INTERESTED PARTY

JUDGMENT

This is a notice of motion made by the Applicant, Peter Okiring Sausau seeking a judicial review order of prohibition against the Respondent and the Interested Party. The background of this application is that Charles Ipeket Sausau, the interested party herein was a claimant in the Amagoro Land Disputes Tribunal Land Case No. 6 of 2011. The Applicant Peter Okiring Sausau was the Respondent. The dispute related to a parcel of land registered as L.R. NORTH TESO/ KOCHOLIA/397. The decision of the tribunal was as follows:-

“This court awards to Mr. Charles Ipeket Sausau the land which was allocated to Mr.

Ejakait Sausau as heir which Mr. Peter Okiring grabbed and joined with his to register in parcel number North Teso/ Kocholia /397. The District Land Registrar is asked to facilitate survey, curving land on the east of the parcel No. North Teso / Kocholia 397 from the Northern part of land registration North/ Teso/ Kocholia/ 790 marking its ends to run towards the hills indicated in the sketch map after taking measurements, then issue each with a title deed.”

The award was subsequently filed at the Busia Chief Magistrate's Court in Land Case No.123 of 2011 for adoption as judgment of the court. Being aggrieved by the decision, the Applicant filed an application for Judicial Review under **Order 53** of the **Civil Procedure Rules** seeking the order that an order of prohibition do issue to prohibit the Respondents from conducting any sittings or proceedings to deliberate on the question of title to land parcel LR. NO.NORTH TESO/KOCHOLIA/ 397 or to execute the aforesaid decision made as adopted in BUSIA C.M.C LAND CASE NO. 123 OF 2011.

The application was brought mainly on the ground that the Amagoro Land Disputes Tribunal had no jurisdiction to entertain or determine an issue relating to title to land. There was another ground raised which was to the effect that the tribunal had exceeded its jurisdiction by delving into issues that were essentially of a succession nature which fell under the jurisdiction of the High Court. The Respondent and the Interested Party were duly served with the application but failed to enter appearance. Neither did they file papers in opposition to the application. This court was satisfied that the Respondent and the Interested Party were duly served and ordered the Applicant to proceed with the application in the absence of the Respondent and the Interested Party.

The issue for determination in this application is whether the Amagoro Land Disputes Tribunal had jurisdiction to deal with the land dispute that was presented to it, and secondly, whether it was entitled to make the award in the nature that it did. This application hinges purely on a point of law. The award of the tribunal had the effect of canceling the title of the parcel of land that was issued to the Applicant. The parcel of land was registered under the **Registered Land Act (now repealed)**. When the tribunal made the award in favour of the claimant, it meant the claimant had acquired an interest in it. If the award of the tribunal were to be given effect to, it will mean that the title issued to the Applicant will have to be cancelled.

The power of **Land Disputes Tribunal** to hear and determine land disputes was provided in the Land Disputes Tribunal Act (now repealed). **Section 3 (1)** of the **Act** provided the jurisdiction as thus:

“(1) Subject to this Act, all cases of a civil nature involving dispute as to:-

- a. boundaries of, or the determination of boundaries to land including land held in common;***
- b. a claim to occupy or work land; or***
- c. trespass to land.”***

The claim before the Land Disputes Tribunal was a claim in respect of ownership of land. Taking into account the provisions of **Section 3 (1)** of the **Land Disputes Tribunals Act** and the case that was before the tribunal, this court is of the view that the tribunal acted *ultra vires* its jurisdiction when it purported to award a parcel of land registered under the **Registered Land Act** (now repealed) to the Interested Party. Disputes in respect of ownership of Registered Land and alteration or cancellation of title deeds issued under statute are strictly within the domain of the High Court and the subordinate Court where the law grants them jurisdiction.

In **Nakuru HC.Misc. Civil Appl. No.314 of 2004, Nyandarua District Tribunal & Another –Vs- Meshack Mwangi Maina & Others** (unreported) the court held:

“Further the tribunal did not have jurisdiction to make any determination as to title to land. The tribunal went off target when it ordered the cancellation of a title and the consolidation of two parcels of land registered under the Registered Land Act. Obviously, the tribunal exceeded its jurisdiction. It acted ultra vires its jurisdiction.”

This court agrees with this holding. **Section 159** of the **Registered Land Act** (now repealed) provided that it was only the High Court or in the case where the value of land was within the jurisdiction of the Magistrate's Court that court which could hear and determine disputes relating to title to land.

For this reason the award of the Amagoro Land Disputes Tribunal was *ultra vires* its jurisdiction. The award was made without jurisdiction. The proceedings leading to the award were null and void *ab-initio*. The judicial review order craved for by the Applicant is granted. The Amagoro Land Disputes Tribunal is prohibited from hearing any dispute relating the title of land held by the Applicant. Similarly too, the Busia Chief Magistrate's Court is prohibited from executing or giving legal effect to the said award of the Amagoro Land Disputes Tribunal. The Applicant shall have the costs of the application and the costs of the application when he sought leave to institute these judicial review proceedings. It is so ordered.

L. KIMARU

JUDGE

**DATED, COUNTERSIGNED AND DELIVERED AT BUSIA THIS 14TH DAY OF
AUGUST 2013.**

F. TUIYOT

JUDGE