



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APP. NO.9 OF 2012**

**MICHAEL ONYONDO JIM.....  
.....APPLICANT**

**VERSUS**

**THE CHAIRMAN, SECRETARY &  
MEMBERS OF AMAGORO LAND**

**CONTROL TRIBUNAL.....1<sup>ST</sup>  
RESPONDENT**

**THE CHIEF MAGISTRATE COURT, BUSIA.....2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....3<sup>RD</sup>  
RESPONDENT**

**AND**

**ANGELA IDIONYI OJUMA .....1<sup>ST</sup> INTERESTED  
PARTY**

**CHRISTOPHER OKOITI.....2<sup>ND</sup> INTERESTED  
PARTY**

**J U D G M E N T**

The Interested Parties, Angela Idionyi Ojuma and Christopher Okoiti, lodged a claim before the Amogoro Land Disputes Tribunal (the tribunal) seeking to be declared the owners of parcel No.South Teso/Amukura/853 (the suit parcel of land) registered in the name of the Applicant. The basis of the Interested Parties’ case was that the suit parcel of land was ancestral land which had been unlawfully registered in the name of the Applicant. After hearing the case, the tribunal found in favour of the Interested Parties. In its award, the tribunal made the following observations:

*“Having heard and considered the representation of all parties and their witnesses and having considered all documents submitted to us, we hereby decide as follows:- this court awards Angela Idionyi Juma her father’s land. The District Land Registrar Busia/Teso Districts is hereby instructed to cancel the title deed parcel No.South Teso/Amukura/853 that was issued to Michael Onyondo Jim as a gift and issue a new title deed to Angela Idionyi Juma. Any aggrieved party to this decision is free to file an appeal within thirty (30) days from today’s*

*date.”*

The decision was rendered on 17<sup>th</sup> November 2011. The Interested Parties presented the award of the tribunal to the subordinate court and the same was adopted as the judgment of the court on 12<sup>th</sup> January 2012. The Applicant was aggrieved by the decision of the tribunal. He sought and was granted leave by this court to institute judicial review proceedings in the nature of certiorari and prohibition. The proceedings were with a view to bringing the decision of the tribunal to this court for the purposes of quashing the same. This court further stayed the execution of the award of the tribunal pending the hearing and determination of the judicial review application. The Applicant filed a substantive motion. In the said motion, the Applicant sought an order of certiorari to remove to this court the decision of the tribunal and have the same quashed. The Applicant further prayed for an order of prohibition to prohibit the subordinate court at Busia from giving effect the said decision of the tribunal. The grounds in support of the motion are stated on the face of the application. The Applicant contends that the tribunal acted in excess of its jurisdiction when it purported to a cancel a title that was legally issued to the Applicant. The Applicant states that the Interested Parties had presented the claim before the tribunal more than thirty (30) years after the title of the suit parcel of land was issued to him. In essence, the Applicant contends that the Interested Parties' claim was void *ab-initio* because it was time barred. The application is supported by the verifying affidavit of the Applicant.

The application is opposed. The 2<sup>nd</sup> Interested Party, Christopher Okoiti swore a replying affidavit in opposition to the application. In the affidavit, he deponed that the suit parcel of land belonged to the 1<sup>st</sup> Interested Party's brother called Andrew Obukhuyi who is deceased. He stated that before the suit parcel of land was registered in the name of the said deceased, it belonged to their grandfather. It was his contention therefore that the suit parcel of land was ancestral land which the deceased Andrew Obukhuyi held in trust for other members of the family, including the 1<sup>st</sup> Interested Party. In essence, the 2<sup>nd</sup> Interested Party was saying that the said Andrew Obukhuyi could not have transferred the suit parcel of land to the Applicant because the land was ancestral land. It was the Interested Parties' case that the tribunal had made the correct decision when it directed that the suit parcel of land reverts back to the members of the family of the late Andrew Obukhuyi.

At the hearing of the application, this court heard oral rival submission made by Mr. Makokha for the Applicant and Mr. Matete for the Interested Parties. This court has carefully considered the said submission and also read the pleadings filed by the parties herein in support of their respective opposing positions. The facts of this case are straight forward. The Applicant purchased the suit parcel of land from one Andrew Odukui (the name that appears from a copy of the extract from the register of the title of the suit parcel of land). The Applicant purchased the suit parcel of land on 24<sup>th</sup> December 1975 at a consideration of Kshs.5,000/-. The suit parcel of land was transferred to the Applicant on the same day. He was issued with the title of the suit parcel of land on the same day. Since then, the register reflects the Applicant as the owner of the suit parcel of land. From the evidence adduced before the tribunal, it was clear that the Applicant and the members of his family have resided on the suit parcel of land since he was so registered.

The basis of the Interested Parties' claim was that the suit parcel of land was ancestral land. According to the evidence adduced before the tribunal, the 1<sup>st</sup> Interested Party claimed that Andrew Obukhuyi, the person who sold the land to the Applicant, was his step-brother who had inherited the land from his late father, one Obukui. They claim that the said deceased sold the land without consulting them. This court found this argument advanced by the Interested Parties difficult to comprehend. If the suit parcel of land was ancestral land, why did it take them more than thirty-five (35) years to lodge a claim for the recovery of the suit parcel of land? In this court's considered view the Interested Parties' claim before the tribunal was an afterthought. In fact, it was misguided and based on a false premise. The Applicant was not given the suit parcel of land as a gift. The Applicant established that he had legally purchased the suit parcel of land from the deceased, the suit parcel of land had been transferred to him, he had taken occupation of the same and occupied the land for a period of more than thirty-five (35) years before the Interested Parties purported to lodge the claim before the tribunal.

It is apparent from the foregoing that the tribunal did not have jurisdiction to hear or determine the dispute. This is because the claim was time barred. Under **Section 7** of the **Limitation of Actions Act**, no action may be brought by any person for recovery of land after the end of twelve (12) years after the cause of action has accrued. In the instant case, the cause of action accrued when the land was transferred to the Applicant on 24<sup>th</sup> December 1975. If the Interested Parties had any claim on the suit parcel of land, they were required to have lodged such a claim within twelve (12) years of the accrual of the said cause of action. This court is not persuaded that in the Kenya of today, especially where land has been adjudicated, and titles issued, that there exists what can be referred to as ancestral land. In the present case, once the land was sold to the Applicant, it ceased to be ancestral land of the Interested Parties. It became the property of the Applicant. The tribunal failed to consider this aspect of the case (that the cause of action was time barred) contrary to the express provision of **Section 13(3)** of the **Land Disputes Tribunals Act** (now repealed) which removed jurisdiction from any tribunal to entertain a claim brought before it that was time barred.

Further, under **Section 3(1)** of the **Land Disputes Tribunals Act** (now repealed), the tribunal did not have jurisdiction to make an award cancelling a title that had been issued to a party to the proceedings before it. By purporting to cancel the title issued to the Applicant, the tribunal clearly acted ultra vires its jurisdiction. For the above reasons, it is clear that the Applicant's application for judicial review will be allowed. The decision of the Amagoro Land Disputes Tribunal made on 17<sup>th</sup> November 2011 is hereby brought to this court for the purposes of quashing the same. The same is hereby quashed and shall have no legal effect. The Busia Chief Magistrate's Court is prohibited by an order of prohibition from adopting the said decision as a judgment of the court. If the same has been adopted, the said court is hereby permanently prohibited from executing or giving legal effect to the same. The Applicant shall have the costs of this application and also the costs of the application seeking leave to institute judicial review proceedings.

**L. KIMARU**

**JUDGE**

**DATED, COUNTERSIGNED AND DELIVERED AT BUSIA THIS 8<sup>TH</sup> DAY OF AUGUST, 2013.**

**F. TUIYOT**

**JUDGE**