



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA

MISC. CIVIL APP. NO.6 OF 2011

REGULO OKELO OKETSI.....
.....APPLICANT

VERSUS

BUDALANGI LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

MARY ANYANGO KECHULA.....INTERESTED
PARTY

JUDGMENT

The Applicant, Regulo Okelo Oketsi is the step son of Mary Anyango Kechula, the Interested Party. According to the case filed before the Budalangi Land Disputes Tribunal (the tribunal), the Interested Party claimed that she was married to Thomas Kechula Okumu (the deceased), the father of the Applicant. Before the said Thomas Kechula Okumu died, he had disagreement with the Interested Party. The Interested Party, with her two sons left the matrimonial home. She returned to the matrimonial home upon the death of the deceased only to discover that the portion of land which she had been allocated by her late husband had been occupied by the Applicant. The parcel of land was stated to be LR. No.Bunyala/Bulemia/154. However, during the hearing of the application for judicial review, it emerged that the parcel of land was actually registered as LR.No.Bunyala/Bulemia/155. Upon making this discovery, the Interested Party filed a case against the Applicant before the tribunal. After hearing the case, the tribunal made an award in favour of the Interested Party essentially directing the Applicant to vacate the portion of land belonging to the Interested Party. The tribunal required the Applicant to relocate to the portion where the Applicant and his sister used to reside. It was this decision that prompted the Applicant to file the present application for judicial review.

The decision of the tribunal was rendered on 29th April 2008. It was received at the Senior Principal Magistrate's Court on 8th September 2008. The Applicant sought the leave of this court to institute judicial review proceedings of certiorari to quash the decision of the tribunal on 22nd January 2010. In the application for leave, the Applicant failed to disclose the date that the decision of the tribunal was rendered. He however indicated that the decision of the tribunal was adopted as the judgment of the court on 21st August 2009. There is a discrepancy between the date appearing in the extracted order of the Resident Magistrate adopting the award of the tribunal and the date pleaded in the pleadings filed by the Applicant. No matter. This court will address this issue at the later part of this judgment. This court granted leave to the Applicant to institute judicial review proceedings in the nature of certiorari on 16th March 2011. The Applicant was ordered to file the substantive motion on within twenty-one (21) days. The substantive motion was filed on the face of it filed on 5th April 2011. However, it is apparent from

the assessment of fees on the face of the motion that the same was filed on a later date.

In the substantive motion, the Applicant sought the following order:

“That an order of certiorari do and is hereby issued to call into the High Court and quash the decision of the Budalangi Land Disputes Tribunal over LR.No.Bunyala/Bulemia/154 dated 29th April 2008 and adopted by the Senior Principal Magistrate’s Court vide Land Case No.58 of 2009 on the 21st of August 2009.”

The substantive motion is worded differently from the prayers sought by the Applicant in the application that sought the leave of the court. In that application, the Applicant cleverly failed to disclose the date that the tribunal rendered its decision. The order sought reads thus:

“That this honourable court do grant leave to REGULO OKELO OKETSI to enable him file a motion seeking for orders of certiorari, with a view to quashing the award/decision made by the Budalangi Land Disputes Tribunal, and adopted in court at Busia i.e. in PMC Land Case No.5 of 2009 on 21st August 2009.”

Although the Interested Party filed a reply to the substantive motion in form of a replying affidavit, from the foregoing, it is clear that the application seeking leave was filed out of time. The decision of the tribunal was made on 29th April 2008. The Applicant was required to challenge that decision within six (6) months of that decision. This is in accordance with **Rule 9(2)** of the **Law of Reform Act** that requires application for judicial review orders of mandamus, prohibition and certiorari to be filed within six (6) months of the decision that is being challenged. The Applicant failed to disclose the fact that the decision of the tribunal was rendered nearly two (2) years before he filed the application seeking the leave of the court to institute judicial review proceedings.

In fact, the Applicant misled the court by failing to disclose the date that the tribunal rendered its decision. This constitutes material non-disclosure that renders the entire proceedings a nullity *ab-initio*. The Applicant compounded his mischief by purporting to present a prayer in the substantive motion that was substantially different from the prayer that he sought when he was granted the leave of the court to institute judicial review proceedings. The Applicant cannot present himself before the seat of justice by seeking an equitable relief when he himself is guilty of committing acts of inequity by attempting to dupe the court into granting him orders in respect of a matter which was filed out of time without leave of the court.

The application for judicial review remedy of certiorari therefore lacks merit as it was filed out of time. It is hereby dismissed with costs to the Interested Party. The Interested Party shall also have the costs of the application in which the Applicant sought the leave of the court to institute judicial review proceedings. It is so ordered.

L. KIMARU

JUDGE

DATED, COUNTERSIGNED AND DELIVERED AT BUSIA THIS 8TH DAY OF AUGUST 2013.

F. TUIYOT

JUDGE