



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

MISC. CIVIL APPLICATION NO. 39 OF 2010 (J/R)

**IN THE MATTER OF LAND PARCEL NO. BUTSOTSO/SHIKOTI/2856 CURRENTLY
BUTSOTSO/SHIKOTI/679, 6798 AND 7042**

AND

**IN THE MATTER OF THE DECISION OF LURAMBI DIVISION LAND DISPUTES
TRIBUNAL CASE NO. 129 OF 2010**

AND

**IN THE MATTER OF THE CHIEF MAGISTRATE'S COURT AT KAKAMEGA - MISC.
AWARD NO. 49 OF 2010**

BETWEEN

REPUBLIC APPLICANT AND

THE CHAIRMAN, LURAMBI DIVISION

LAND DISPUTES TRIBUNAL RESPONDENT

AND

ANDREW CHIBOLE OKOTSE INTERESTED PARTY

AND

JULLIETTA MWANDAEX-PARTE APPLICANT

R U L I N G

Before me is a Notice of Motion dated 29th October, 2010 brought under Order LIII Rule 3 of the Civil Procedure Rules filed by the ex-parte applicant JULLIETTA MWANDA. Three orders are sought as follows –

1. That the Honourable court be pleased to issue an order of Certiorari to remove into this court and quash the decision of Lurambi Land Disputes Tribunal case No. 129 of 2010 and read to the parties on 8th July, 2010 together with all consequential orders made pursuant thereto.
2. An order of prohibition to remove to this court the decision of the Lurambi Division Land Disputes Tribunal in case No. 129 of 2010 and prohibit the tribunal from any deliberations

- touching on the parcels of land in question.
3. Costs of the application be in favour of the applicant.

The grounds of the application are in the statutory statement dated 6th October 2010. The application was supported by the verifying affidavit sworn by the applicant on 7th October 2010.

In the affidavit, it was deponed that the applicant raised an objection before the Tribunal that it did not have jurisdiction as the land was registered in the name of her husband; that notwithstanding the written objection, the tribunal went ahead and deliberated on the registered land and gave a verdict which was read to the parties on 8/7/2010; that the interested party had applied to the Chief Magistrate's court Kakamega vide award No. 49 of 2010; and that the said adoption be stayed and the decision of the tribunal be quashed and it be prohibited from any further dealings with the parcel of land.

The Attorney General entered appearance for the respondent, but did not file any opposition to it.

The interested party through counsel, MS E. M. Masheti & Company filed a replying affidavit. He contended therein that the Tribunal had jurisdiction to deal with the matter.

The ex-parte applicant through counsel M/S Gichaba Ondieki & Company filed written submissions. It was emphasized in the said submissions that the applicant had objected before the Tribunal that she did not have *locus standi* on land that was registered in the name of her late husband, but the Tribunal went ahead and made a decision.

At the hearing, Mr. Ondieki for the applicant relied on the written submissions filed. Mr. Onyiso for the respondent (the Tribunal) stated that they did not intend to respond to the application. Mr. Elungata for the interested party relied on the replying affidavit of the interested party.

In my view, the ex-parte applicant as an aggrieved party from the proceedings in the Tribunal has a right to approach this court through Judicial Review proceedings – see Section 8 and 9 of the Law Reform Act (Cap. 26).

However, this application will be struck out on a technicality. It is premature. There are two ways to challenge the decision of the Tribunal. The first is to file an appeal under Section 8 of the Land Disputes Tribunals Act (Cap. 303A) now repealed. Section 8 (1) of the Act provides for such appeals. It states –

8 (1) Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within 30 days of the decision, appeal to the Appeals Committee Constituted for the Province in which the land which is the subject matter of the dispute is situated.

The other option is to await the adoption of the decision of the Tribunal by the magistrate's court under Section 7 of the Act, and then come to the High Court through Judicial review proceedings.

The ex-parte applicant has come to this court under judicial review before the adoption of the Tribunal's award by the magistrate's court. That action was premature and misadvised. The application is consequently incompetent and for striking out, without going into the merits of the complaints.

As for costs, I am of the view that each party bear their respective costs of this application which has been struck out on mere technical reasons.

In the result, I order as follows –

1. I strike out the application for being incompetent and premature.
2. Parties will bear their respective costs of the application.

Dated and delivered at Kakamega this 19th September, 2013

George Dulu

J U D G E

In the presence of –

Mr. Ondieki for the ex-parte applicant

Mr. Masheti for the interested party

N/A for the respondent

Polycap – court clerk.