



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA

JUDICIAL REVIEW NO. 23 OF 2012

REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN, LAND DISPUTE

TRIBUNAL – LURAMBI DIVISION 1ST RESPONDENT

THE CHIEF MAGISTRATE – KAKAMEGA 2ND RESPONDENT

AND

CHARLES SAKWA INTERESTED PARTY

AND

HERBERT ANDALA INYENDEEX-PARTE APPLICANT

RULING

Before me is a Notice of Motion dated 29th March 2012 filed by the ex-parte applicant herein under Order 53 rule 3 of the Civil Procedure Rules. The reliefs sought are two as follows -

1. That an order of certiorari do issue directed against the Lurambi Division Land Dispute Tribunal case No. 150 of 2011 concerning land parcel **Butsotso/Shikoti/748** together with the proceedings and all decisions on Kakamega Chief Magistrate's Court Award No. 58 of 2011.
2. That costs be provided for.

The application was supported by a statement of facts dated 7th March 2012 and an affidavit verifying the facts dated the same day, both filed with the application for leave as required in Judicial Review proceedings. Counsel for the ex-parte applicant, Gabriel Fwaya advocate filed written submissions.

The application is opposed by the interested party who filed a replying affidavit which he swore on 8th November, 2012. His counsel, Wilfrida Osodo filed written submissions on 4th of October, 2013.

Counsel who appeared at the hearing, Mr. Shiveka for the applicant and Ms Andia for the interested party highlighted the written submissions. I have perused both sets of written submissions.

This application is hinged on whether the Land Disputes Tribunal was legally in existence to adjudicate on the matter at the time in question. Counsel for the ex-parte applicant has submitted that, under the

Environment and Land Court Act No. 19 of 2011 Section 21, the Land Disputes Tribunal Act No. 18 of 1990 was repealed. The respondent's counsel has not given any contrary view. The dispute herein was heard by the District Land Disputes Tribunal on 12.9.2011, after the enabling Act was repealed on 30.8.2011 when the Environment and Land Court Act came into effect. In view of this, there could not have been a legally constituted Land Disputes Tribunal on 12.9.2011 to adjudicate on the matter. That in itself, means that the decision herein contested was not made by a legally constituted Land Disputes Tribunal. The decision was illegal, null and void. On that account alone, certiorari orders will issue.

Consequently, I allow the application and grant certiorari orders as requested in prayer 1. The interested party will pay the ex-parte applicant's costs of these proceedings.

Dated at Kakamega this 31st day of October, 2013

George Dulu

JUDGE