



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

JUDICIAL REVIEW NO. 27 OF 2012.

IN THE MATTER OF AN APPLICATION BY BURUMBA ‘C’ COMMUNITY FOR ORDERS OF THIS HONOURABLE COURT OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE DECISION AND FINDINGS OF BUSIA MUNICIPAL

LAND DISPUTE TRIBUNAL

AND

IN THE MATTER OF THE CHIEF MAGISTRATE LAND DISPUTE NO. 20 OF 2012

BETWEEN

BURUMBA ‘C’ COMMUNITY

-VERSUS-

JOHN MUIRURI

REPUBLIC .....APPLICANTS

VERSUS

- 1. BUSIA CHIEF MAGISTRATE )
- 2. BUSIA LAND DISPUTES TRIBUNAL )

AND

JOHN MUIRURI ).....INTERESTED PARTY

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

The Exparte Applicant,through M/S. Balongo & company advocates, filed the application dated 20<sup>th</sup> November, 2012 for an order of certiorari against the award of Busia Municipal Land Dispute Tribunal in relation to Bukhayo/Mundika/4175 and 4176. They also pray for an order of prohibition directed at the Busia Municipal Land Dispute Tribunal and Busia Principal Magistrate’s court against executing the award. The third prayer is for cost. The application is based on the two grounds on the face of the application, the verifying affidavit by Wycliffe Okisai and the statutory statement filed together

with the application. The Interested Party, John Muiruri, through M/S. Bogonko Otanga & company advocates filed a replying affidavit opposing the application.

Both counsel agreed to file written submissions. The applicant's counsel filed their submissions on 20<sup>th</sup> February, 2013 while the Interested Party's counsel filed theirs on 3<sup>rd</sup> July, 2013. The court has carefully considered the grounds on the face of the application, the statutory statement, verifying and replying affidavits plus the submissions of both counsel and find as follows:-

1. That the Exparte Applicant is the one who moved to the Busia Municipality Land Disputes Tribunal and filed the case against the Interested Party complaining that he had blocked the road of access leading to their village. The Tribunal, after hearing the parties and visiting the properties subject matter of the case before them, ruled that the District Surveyor was to confirm the position of the six metre wide road between the defendant and one Wycliffe Okisai. It is strange that the Exparte Applicant is now claiming that the Tribunal did not have jurisdiction to deal with the matter as the properties concerned were registered, a fact he must have known when he filed the matter.
2. That the powers granted to the Land Dispute Tribunals under Section 3 (1) of the Land Dispute Tribunal Act, (now repealed), included power to hear and determine all cases of a Civil nature involving a dispute to the boundaries to land. The decision therefore of the Busia Municipality Land Dispute Tribunal, directing the Land surveyor to position the six metre wide road between the properties of the defendant and Wycliffe Okisai was within their mandate as it related to the position of boundaries marking the road and land owned by the two parties.
3. That the Tribunal award did not in any way direct the cancellation of title to land parcels Bukhayo/Mundika/4175 and 4176 as the Exparte Applicant seems to suggest in view of the position set out in 2 above.
4. That there is no evidence adduced by any of the parties to show that the Busia Municipality Land Dispute Tribunal failed to give any of the parties an opportunity to present their case and the court finds no fault in the process followed by the tribunal in hearing and coming up with the award.

From the foregoing therefore, the court finds that the Exparte Applicant's application dated 20<sup>th</sup> November, 2012 and filed in court on 21<sup>st</sup> November, 2012 has no merit and is dismissed with costs.

**S.M. KIBUNJA,**

**JUDGE.**

DATED AND DELIVERED ON.....16TH.....DAY OF ...OCTOBER, 2013

IN THE PRESENCE OF;

**JUDGE.**