



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

JUDICIAL REVIEW NO. 13 OF 2008.

IN THE MATTER MATAYOS DISPUTSES TRIBUNAL CASE

AND

IN THE MATTER OF BUSIA PM LAND DISPUTE NO. 71 OF 2008

AND

IN THE MATTER OF LR. NO. BUKHAYO/MATAYOS/650

**REPUBLIC .....APPLICANT**

**VERSUS**

**MATAYOS LAND DISPUTES TRIBUNAL.....RESPONDENT**

**LAWRENCE OCHUO ].....INTERESTED PARTIES.**

**CHARLES O. OCHUO ]**

**AND**

**IN THE MATTER OF GEORG OJWANG'A ELIAS WANYAM AND SEBASTIAN OJIAMBO.**

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

**GEORGE OJWANG'S, ELIAS WANYAMA and SEBASTIAN OJIAMBO** filed the Notice of Motion dated 13<sup>th</sup> July, 2009 through M/S. Ashioya & company advocates for an order of certiorari to call into this court and quash the decision of Matayos Land Disputes Tribunal over Bukhayo/Matayos/650 made on 25<sup>th</sup> November, 2008 and adopted in Busia P.M.C Land case No.71 of 2008 on 25<sup>th</sup> November, 2008.

The main basis of the application as discerned from the two grounds set out on the Notice of Motion and papers filed at the leave application stage are as follows:-

1. That the tribunal order exceeded their powers limited under section 3 of the Land Dispute Tribunal Act (Now repealed ).
2. That the Tribunal contravened sections 21 and 22 of the Registered Land Act (Now repealed) by making a determination of the boundary without the Land Registrar's and Surveyor's involvement.

3. That the Applicants title to the land being a first registration is indefeasible.

The Interested Parties , Lawrence Oloo Ochuo and Charles Ochuo opposed the application through the replying affidavit sworn on 17<sup>th</sup> July, 2013 by Lawrence Oloo Ochuo and filed through M/S. Wanyama & company advocates.

On 22<sup>nd</sup> July, 2013 the counsel for the parties agreed to proceed with the matter by filing written submission. The Applicants submission dated 29<sup>th</sup> July, 2013 and those of the Interested Parties dated 23.9.2013 were filed on 29.7.2013 and 23.9.2013 respectively.

I have carefully considered the application, the replying affidavit and submissions by counsel and find as follows:-

1. That the copy of the tribunal proceedings shows the persons named as Interested parties and Exparte Applicants in this case appeared as the Plaintiffs and Defendants respectively in the tribunal case No. 1 of 2008. The record at the heading on page 1 has the description of land parcel Bukhayo/Matayos/650, indicating that was the subject matter of the dispute before the tribunal.
2. That the tribunal record indicates clearly that the tribunal members were aware at the commencement of the hearing that George Ojwang'a, who was the 1<sup>st</sup> Defendant, and appears as the 1<sup>st</sup> Exparte Applicant herein, was deceased. There is no record to show whether the estate of the said George Ojwang'a was represented during the hearing before the tribunal, and if so, by who. The Law of Succession Cap 160 of Laws of Kenya provides how estates of deceased persons should be dealt with and section 3(1) of the Land Disputes Tribunal Act (Now repealed) did not empower tribunals with the jurisdiction to distribute estates of deceased persons. The tribunal's order, therefore, in so far as it affected the interest of the estate of George Ojwang'a in relation to Bukhayo/Matayos/650, was without jurisdiction and therefore void ab initio.
3. That the tribunal proceedings and award clearly shows that they made orders affecting persons who were not parties to the dispute before them. The award also affected Land parcel Bukhayo/Matayos/1105 which was not part of the subject matter of the dispute before the tribunal. The order directed to Peter Wanyama, who was not party to the dispute, that he was to move to Bukhayo/Matayos/1105 was in contravention of the legal procedures and against the principles of natural justice and hence a nullity as he was not heard.
4. That the decision of the tribunal had the effect of conferring ownership rights to registered Land which was in excess of their jurisdiction which was limited under section 3 (1) of the then Land Disputes Tribunal Act. The forum for dealing with distribution of land registered in the name of a deceased person is the Courts of Law and the tribunal had no such jurisdiction. The forum for determining the ownership rights of land registered under the then Registered Land Act was the Courts of Law and not the tribunal.

The foregoing clearly shows the Exparte Applicants' Notice of Motion dated 13<sup>th</sup> July, 2009 has merit and is allowed in terms of prayers 1 with costs to be paid by the Interested Parties.

**S.M. KIBUNJA,**

**JUDGE.**

**DATED AND DELIVERED ON 27<sup>TH</sup> DAY OF NOVEMBER, 2013**

**IN THE PRESENCE OF;**