



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

MISCELLANEOUS CIVIL APPLICATION NO. 191 OF 2009.

REPUBLIC

.....**APPLICANT.**

=VERSUS=

THE NAMBALE LAND DISPUTES TRIBUNAL

..... **1ST RESPONDENT.**

THE RESIDENT MAGISTRATE'S COURT AT BUSIA

.....**2ND RESPONDENT.**

-AND-

DAVID ASHIBO NDAKALU

.....**EXPARTE APPLICANT**

PAUL JUMA

OTAGA.....EXPARTE APPLICANT

-AND-

CHRISPINUS MANG'ENI

WAMANYA.....THE INTERESTED PARTY

R U L I N G.

The 1st Applicant, David Ashibo Ndakula, filed the Notice of Motion dated 13.12.2012 against the Interested party Chrispinus Mangeni Wamanya, for eviction from Bukhayo/Kisoko/3221 and costs. The Application is based on two grounds set out on the application and the supporting affidavit of David Ashibo Ndakalu sworn on 6.12.2012.

The application is opposed by the Interested Party who filed a replying affidavit sworn on 7th March, 2013 .

Both counsel then filed written submissions.

I have carefully considered the grounds on the face of the application, the supporting and replying submission plus written submission by counsel and find as follows;-

1. That this matter was initially a judicial review application which was finalised on 19.02.2012 when the Nambale Land Disputes Tribunal award in respect of Bukhayo/Kisoko/3221 was called into the court and quashed. The Interested Party was ordered to pay costs and the record shows the costs were taxed and some agreement reached on its payment.
2. That the court did not issue any other orders on ownership or use of Bukhayo/Kisoko/3221, other than quashing the Tribunal order, and the application dated 13.12.2012 is not based on any orders issued by this court. There is also no pending issue in this case that is awaiting determination.
3. That as correctly submitted by Interested Party/Respondent party's counsel, the Applicant ought to have proceeded by filing an appropriate suit under which he could have filed the current application, if successful on the ownership determination.
4. That there are no other processes or motions that can be prosecuted under this file other than those relating to costs, extraction and service of the court's order issued on 19.02.2012. There is also no evidence of any appeal having been preferred or orders from the Court of Appeal to be executed.

For reasons set out above, the Applicants' application dated 13.12.2012 is without basis and is dismissed with costs.

S.M. KIBUNJA,

JUDGE.

DATED AND DELIVERED ON 27TH DAY OF NOVEMBER, 2013 AT BUSIA.

IN THE PRESENCE OF;

JUDGE.