



No.301
REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

JUDICIAL REVIEW MISC.CIV. APPL.NO. 26 OF 2011

OMBETA OMBETA.....APPLICANT

VERSUS

THE CHAIRMAN, SUNEKA LAND DISPUTES TRIBUNAL.....1ST
RESPONDENT

OMAMBIA NYAMBISA.....2ND RESPONDENT
THE DISTRICT LAND REGISTRAR, KISII.....3RD
RESPONDENT

THE CHIEF MAGISTRATE, KISII.....4TH
RESPONDENT

RULING

1. The Chamber Summons before me is dated 8th day of march, 2011 and the same is brought under the provisions of order 53 Rules 1(1)(2) and (4) of the Civil Procedure Rules, 2010. The applicant seeks the following orders:-

1. *This application be certified as urgent and heard on priority basis.*
2. *Leave be granted to the Applicant to apply for orders of Judicial Review by way of Certiorari to bring before this Court the order and/or decision of Suneka Land Disputes Tribunal dated 25th January, 2011 and judgment and/or decree of the Chief Magistrate, Kisii dated 4th March, 2011 for purposes of being quashed.*
3. *Leave be granted to the Applicant to apply for orders of Judicial Review by way of prohibition directed to the Respondents prohibiting them from in however manner transacting, dealing in or interfering with land parcel No.WANJARE/BOMORENDA/221 without complying with the due process of the law.*
4. *Leave be granted to the Applicant to apply for orders of Judicial Review by way of Mandamus directed to the 3^d respondent compelling him to register a prohibition restraining any transaction in relation to the suitland and to compel him to cancel the implementation and/or execution of the decision of the Tribunal dated 25th January, 2011 and/or the Judgment/Decree of the Court dated 4th March, 2011.*
5. *An order of stay of execution of decree in **Kisii CMC.MISC.CIVIL APPLICATION. NO. 23 of 2011** and of stay of execution of any orders and/or decision issued by the 4TH Respondent more*

specifically the Judgment/Decree dated 4th March, 2011 and/or Suneka land disputes Tribunal be issued pending hearing and determination of the Judicial Review proceedings herein.

6. *The costs of this application be provided for.*

2. The application is supported by the grounds on the face and on the sworn affidavit of Ombeta Ombeta, the applicant herein. The application is also supported by the statement of facts dated 07th March, 2011 and the verifying affidavit of the same date. The applicant contends that the Suneka Land Disputes Tribunal arbitrarily made a decision in Tribunal Case No.7 of 2010 to the effect that the suit land namely **LR.NO. WANJARE/BOMORENDA/221** be given to the 2nd respondent. The applicant contends that the decision of the tribunal was a nullity in law for having grossly contravened the rules of natural justice, and for being ultra vires the powers of the Tribunal as the Tribunal had no jurisdiction to entertain the dispute before it. The applicant also contends that he was wrongfully enjoined in the tribunal proceedings as he was not the registered owner of the suit land. Finally, the applicant averred that the tribunal decision had been filed in CM's court at Kisii for entry of judgment vide **Kisii CMCC. MisC. Application No.23 of 2010.** Judgment was entered on 04th March, 2011.

3. The respondents who were duly served filed two(2) replying Affidavits dated 14th April, 2011 by **Zebedeo Matoke Onkundi** and 18th April, 2011 by **Omambia Nyambisa** respectively. **Zebedeo Matoke Onkundi** who is the Chairman of Suneka Land Disputes Tribunal had deponed that his committee had jurisdiction to hear and determine the dispute that was placed before it and that if indeed the applicant knew that the tribunal did not have jurisdiction to deal with the matter, he should have raised the issue while the matter was still before the tribunal.

4. The 2nd respondent, **Omambia Nyambisa** deponed that having failed to file an appeal to the decision of the Tribunal, the Applicant should not be heard to complain at this stage that the Tribunal had no jurisdiction to hear and determine the dispute that was before it. That in any event the applicant did not dispute that he sold land to the 2nd respondent. The 2nd respondent contended that the applicant's application was intended to delay justice and to deny the 2nd respondent the fruits of his judgment. The 2nd respondent urged the court to dismiss the applicant's application for leave to commence judicial review proceedings.

5. I heard submissions from counsel appearing and from the 1st respondent in person. **Mrs E.Asati** for the applicant submitted that the leave sought by the exparte applicant should also operate as a stay since the 2nd respondent had made attempts to execute after the decree was drawn. **Mr. Nyagwencha** appearing for the 2nd respondent submitted that the applicant brought his application outside the 6 months period. He averred that the impugned decision is dated 3rd March, 2010.

6. From the record, the decision of the Tribunal is dated 25th January, 2011, so it is not clear to the court how counsel for the 2nd respondent concluded that the decision sought to be challenged is dated 3rd March, 2010.

7. Briefly, the 2nd respondents claim before the Tribunal was for the land he alleged bought from the Ex-parte applicant in or about the year 1975 for a consideration of kshs.5,500/-.

8. This is an application for leave. I have considered the facts that have been placed before me. I have also considered the provisions of the Land Disputes Tribunals Act, No.18 of 1990(now repealed) and in particular Section 3(1) of the said Act. After carefully considering all the above, I am satisfied that the applicant has made out a case for the orders sought. This application could have proceeded exparte. From the record, I am also satisfied that this application has been made within the stipulated period as provided by order 53 Rule 2 of the Civil Procedure Rules. I am also satisfied that the applicant has made out a case for the leave so granted to operate as a stay.

9. Accordingly, the ex parte applicant's application dated 8th March, 2011 be and is hereby allowed in terms of prayers **2,3,4** and **5**. The applicant shall file and serve the main motion within the next twenty one (21) days from the date of this ruling. The costs of this application shall abide the outcome of the main motion.

10. It is ordered accordingly.

Dated and delivered at Kisii this 20th day of January, 2012.

RUTH NEKOYE SITATI
JUDGE.

In the presence of:-

Mr. Ochwangi for Asati (present) Ex-parte Applicant.

N/A for 1st Respondent

N/A for 2nd Respondent

Mr. Bibu - Court Clerk.

RUTH NEKOYE SITATI
JUDGE.