



REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

MISCELLANEOUS CIVIL APPLICATION NO. 21 OF 2009

**IN THE MATTER OF AN APPLICATION BY SAMSON LUGALIKI KARANI FOR ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF THE WESTERN PROVINCIAL LAND DISPUTES APPEALS COMMITTEE IN APPEAL NO. 59 OF 2009 AT KAKAMEGA**

**AND**

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT**  
**AND**

**IN THE MATTER OF THE VIHIGA SENIOR RESIDENT MAGISTRATE'S COURT MISC. CIVIL APPLICATION NO. 22 OF 2009, JAMES MISOGA KESOHOLE VS SAMSON LUGALIKI KARANI**

**BETWEEN**

**REPUBLIC THROUGH SAMSON LUGALIKI KARANI ..... APPLICANT**

**AND**

**THE SENIOR RESIDENT MAGISTRATE VIHIGA AND THE**

**WESTERN LAND DISPUTES APPEALS COMMITTEE.....RESPONDENTS**

**AND**

**JAMES MISOGA KESOHOLE ..... INTERESTED PARTY**

**R U L I N G**

The Notice of Motion dated 27th July, 2009 seeks orders under O.53 r.3 of the Civil Procedure Rules that orders of Certiorari do issue against the Senior Resident Magistrate's court at Vihiga and Western Province Land Disputes Appeals Committee to remove into this court and quash the proceedings pending before them in respect of land parcel **NO. SOUTH MARAGOLI/BUYONGA.2088.**

The grounds of the application are that the Provincial Appeals Committee has no jurisdiction to entertain the dispute which dispute falls under the Law of Contract. That the dispute also raises issues under the Law of Succession Act and/or title to land. That the Senior Resident Magistrate's court in entertaining any decision reached by the Provincial Appeals Committee would be in excess of jurisdiction.

I have read the statement of facts dated 7.7.09 and the affidavit sworn on the same day. The exparte applicant's case is that he entered into a sale agreement in respect of land parcel **No. South Maragoli/Buyonga/2088** with the interested party, JAMES MISOGA KESOHOLE on 29.12.01.

That on 29.12.05 the applicant and the interested party entered into a second agreement to revoke the agreement dated 29.12.01 after it dawned on the parties that the applicant had no capacity to sell the property which belonged to the deceased father of the applicant and the applicant had not obtained grant of letters of Administration.

According to the applicant, he made attempts to refund the deposit of the purchase price paid by the Interested Party but the Interested Party declined to accept the cheque. That the Interested Party thereafter filed a case the High Court (NBI HCCC. 284/06) claiming specific performance together with an application for injunction which application was dismissed. That the Interested Party then lodged a complaint with the Vihiga Division Land Disputes Tribunal in respect of the same parcel of land. That the Interested Party was dissatisfied with the said Tribunal's decision and appealed to the Provincial Appeals Committee which case is still pending. That the Interested Party also filed a Misc. Application Award Appl. No.22/09 at Vihiga SRM's court seeking a stay of the Vihiga Land Disputes Tribunal ruling.

The appeal pending before the Provincial Appeals Committee and the filing of the case at the Vihiga Senior Resident Magistrate's court is what has prompted the instant application.

The applicants contention is that the Provincial Appeals Committee has no jurisdiction to hear the case and that the SRM's court with given effects to an erroneous and unlawful decision.

The application is opposed as per the replying affidavit of the Interested Party sworn on 17.8.2009. In the said affidavit, the deponent that he entered into a sale agreement with the applicant for the sale of the suit land. That the applicant failed to transfer the property to him as to the terms of the agreement hence his filing the case NBI HCCC 284/06 seeking specific performance. The interested party asserted that he filed the claim before the Vihiga Land Disputes Tribunal and the Provincial Appeals Land Dispute Tribunal to seek justice as the respondent cannot keep the money paid and also retain the parcel of land.

The interested party did not turn up on the hearing date for the application though served.

I have considered the application, the reply to the same and the submissions made by Mr. Amendi, counsel for the applicant.

The interested party has not disputed the averments by the applicant that at all material times the suit land was registered in the name of the applicant's deceased father and that no grant of letters of administration had been issued to the applicant. The Interested Party has also not denied that he entered into a further agreement with the applicant (annexure "SLK 2") which revokes the sale agreement and opts for a refund of the money paid to the applicant.

The interested party has also not disclosed the outcome of the suit filed at the High Court, Nairobi. The interested party has also not commented about his having declined to accept the refund cheque said to have been offered by the applicant. Without any rebuttal of the assertions made by the applicant, this court takes the same to represent a true statement of facts.

The power of the tribunals is to provide for under S. 3 (1) of the Land Disputes Tribunal Act No. 18 of 1990 which provides as follows:-

***"S.3 (1) Subject to this Act, all cases of a civil nature involving a dispute as to –***

***(a) The division of, or the determination of boundaies to land, including land held in common;***

***(b) A claim to occupy or work land; or***

**(c) Tresspass to land.**

***Shall be heard and determined by a Tribunal established under section 4.”***

The Tribunals have no powers to determine disputes on issues of contractual rights between the parties.

The Provincial Land Disputes Tribunal therefore had no jurisdiction to adjudicate over the interested parties claim. Consequently, the Senior Resident Magistrate’s court Vihiga in entertaining or adopting any decision of the Provincial Appeals Committee would be acting in excess of jurisdiction. With the foregoing, the Notice of Motion dated 27.7.09 is allowed with costs to the applicant.

***Delivered, dated and signed at Kakamega this 23<sup>rd</sup> day of February, 2012***

**B. THURANIRA JADEN**

**J U D G E**