



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KAKAMEGA

Judicial Review 12 of 2010

IN THE MATER OF LAND PARCEL NO.KAKAMEGA/SHIRU/527

AND

IN THE MATTER OF HAMISI DISTRICT LAND DISPUTE TRIBUNAL

AND

IN THE MATTER OF HAMISI RMCC MISC. NO.1 OF 2010

BETWEEN

REPUBLIC APPLICANT

AND

THE CHAIRMAN

HAMISI DISTRICT LAND DISPUTE TRIBUNAL RESPONDENT

AND

INTERCONTINENTAL

CHRISTIAN MINISTRIES INTERESTED PARTY

AND

JORAM AVOSA EX-PARTE APPLICANT

J U D G M E N T

In his application for judicial review dated 20/3/2010 the applicant is seeking an order of certiorari to issue and quash the decision and order of the Hamisi District Land Disputes Tribunal in respect of plot number **KAKAMEGA/SHIRU/527** and the proceedings and verdict in Hamisi Resident Magistrate Court in Miscellaneous application number 1 of 2010.

The applicant's contention is that the Land Disputes Tribunal lacked jurisdiction as the issue at hand involved sale of land and was not a boundary dispute. The dispute involved only one property and therefore does fall in the category of boundary disputes. The applicant further contends that there was a dispute on the measurement of the portion sold to the Interested Party.

On their part the Interested Party contends that the Land Disputes Tribunal had jurisdiction to hear and determine the matter. Further, they maintain that the application is premature as the Hamisi Court has not finalized the matter and that the only remedy available to the applicant is prohibition against the proceedings at the Hamisi Court.

The proceedings herein show that the applicant is the registered owner of plot number **KAKAMEGA/SHIRU/527**. He sold a portion of that land to the Interested Party who has put up some developments on the land. There was a dispute as to the extent of the plot sold to the Interested Party. The Interested Party wanted to have the plot sub-divided and obtain a title but the applicant developed cold feet. The matter ended at the Hamisi Land Disputes Tribunal.

The main issue for determination is whether the Land Disputes Tribunal had jurisdiction to handle the matter.

Section 3(1) of the Land Disputes Tribunal which has now been repealed state as follows:-

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 boundaries to land, including land held in common:

(b) a claim to occupy or work land: or

(c) trespass to land.

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

Under the above provisions, the Tribunals can deal with the division or determination of boundaries. **Section 2** of the Act does not exclude the Tribunals from dealing with land registered under the Registered Land Act as argued by the applicant. Does division or determination of boundaries include what transpired before the Hamisi Land Disputes Tribunal.

The proceedings before the Tribunal involved or are equivalent to enforcement of a Sale Agreement. The Interested Party had bought land from the applicant who was unwilling to effect the transfer. The application dated 12th February 2010 in **Hamisi RMCC Miscellaneous No.1 of 2010** is seeking the orders of the court to have the land sub-divided and the executive officer to effect the sub-division and allow the Interested Party take its portion. I do hold that that process does not fall within the provisions of **Section 3(1) (a)** of the Land Disputes Tribunal Act No.18 of 1990. Although the process involves division of the land, the proceedings involved settlement and enforcement of a contractual dispute.

The matter could have been dealt with by the court. Although the Interested Party has a valid claim against the applicant, it was only prudent for them to have tried the matter in court instead of at the Tribunal. I do hold that the Tribunal lacked jurisdiction to hear and determine the dispute.

As to whether the application should await the determination of the proceedings before the Hamisi Court, I do find that that could only save technical purposes but would not help the parties herein. Since the Tribunal lacked jurisdiction it will serve no purpose to allow the Hamisi Court to handle the matter only for it to be quashed later.

In the end, I do grant the application herein as prayed. Since the applicant participated in those proceedings before the Tribunal, he should not be awarded any costs and each party shall meet his own

costs.

Delivered, dated and signed at Kakamega this 27th day of March 2012

SAID J. CHITEMBWE
J U D G E