



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA
JUDICIAL REVIEW 1 OF 2011

1. JOHN WAMBURA.....PLAINTIFF

2. ANAKLETUS WAMBURA

VERSUS

1. BUDALANGI LAND DISPUTE TRIBUNAL

2. BUSIA PRINCIPAL MAGISTRATE

3. JOHN WAMBURA.....RESPONDENTS

J U D G E M E N T

The ex parte applicant in his Amended Notice of motion dated 4th June 2011 seeks for an order of certiorari to all into the High Court and quash the order made by the Senior Resident Magistrate Busia on 27/03/02 adopting the ward of Funyula Land Dispute Tribunal as the judgement of the court. The statement in support of the motion contains the facts and grounds in support of the application. The applicants main ground is that the tribunal had no jurisdiction to hear and determine the dispute which relates t land registered under the Registered Land Act. The tribunal gave an order that the suit land title should go to the Interested party.

The interested party supports the decision of the tribunal as set out in its pleadings and submissions.

The jurisdiction of the tribunal is stipulated under section 3 (1) of the Land Disputes Tribunal Act. The tribunal has power to hear disputes relating 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**

The proceedings before the tribunal are very clear that the Interested party was claiming title to Land parcel number Samia/Nambuku-Lugala/501 which was registered in the name of the ex parte applicant. His kind of dispute is not included in Section 3 (1) of the Land Disputes Tribunal Act. The

Tribunal has no jurisdiction to hear the matter and to order that the title passes from the ex parte applicant to the Interested party. It is only the courts of law which have jurisdiction to hear any dispute relating to land registered under the Registered Land Act cap 300. The certified copy of register confirms the registration of the land under the Act. Section 159 of the Act confers jurisdiction to hear land disputes on registered land to the High Court and to the Resident Magistrates court. It is the pecuniary value of the land which determines to which court the dispute shall be heard.

The Funyula Land Disputes tribunals award was made without jurisdiction thus rendering it null and void for all intents and purposes. The award could not be validated by its adoption as judgement by the Busia Senior Resident Magistrate. Such as endorsement by the court was a futile exercise. I rely on Civil Appeal no.256 of 2002 Kisumu where the Court of Appeal in a case with similar acts held that the tribunal had no jurisdiction.

The application dated 07/06/04 is hereby allowed. The award of the Funyula Land Disputes Tribunal as adopted by the Busia Court is hereby called into this court and quashed accordingly. The costs of the suit to be paid by the Interested Party.

F.N. MUCHEMI
J U D G E

Judgement dated and delivered on the 28th day of May 2012 in the presence of none attendance for parties though notified.

L. KIMARU
J U D G E