



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

JUDICIAL REVIEW 34 OF 2009

IN THE MATTER OF AN APPLICATION BY SHEM SIRENGO MULATI TO APPLY FOR AN ORDER OF CERTIORARI TO REMOVE INTO THEIR HONOURABLE COURT AND QUASH THE DECISION OF LUGARI DISTRICT LAND DISPUTES TRIBUNAL WHICH WAS READ AND ADOPTED AS THE JUDGMENT OF HTE COURT ON 16/7/2009 IN BUTALI SRMC MISCELLANEOUS AWARD NO. 6 OF 2009

BETWEEN

REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN, LUGARI LAND DISPUTES TRIBUNAL 1ST RESPONDENT

THE SENIOR RESIDENT MAGISTRATE,

BUTALLI LAW COURTS 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

CLEMENT INGULE ETSIMILE)

ARTHUR JUMA MULEI) 4TH RESPONDENTS

AND

SHEM SIRENGO MULATI EX PARTE APPLICANT

RULING

The *Exparte* applicant, SHEM SIRENGO MULATI , (hereinafter applicant) by way of Notice of Motion dated 12.10.09 brought under Order 53 rule 3 seeks orders that an order of Certiorari do issue to remove into this honourable court and quash the decision of the Lugari Land Disputes Tribunal which was read and adopted by the court on 16.7.09 in Butali SRM Misc. Award No. 6 of 2009.

The thrust of the applicant's supporting affidavit is that the Tribunal did not have the mandate to order cancellation of Title to land or to order any correction and/or rectification of title to land. It is also deponed that the claim before the Tribunal was time barred and that the Consent of the Land Control Board was not obtained.

The 4th respondent, **ARTHUR JUMA MULEI** opposed the application as per the affidavit in reply sworn on 30.12.09, it is averred in the said affidavit that the applicant did not prefer an appeal against the decision of the Tribunal. That the award of the Tribunal was adopted as a judgment of the court on 16.7.09 and a decree issued on 18.7.09 and the court has no jurisdiction to quash the orders sought.

The firm of N. Muniolo Advocates appeared for the applicant while Musiega & Co. Advocates appeared for the 4th respondent. The parties filed written submissions which I have duly considered.

The decision made by the Tribunal was on sub-division of land. The Tribunal exceeded its Jurisdiction as provided in Section 3 (1) of the Land Disputes Tribunal Act which stipulates as follows:-

“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) Trespass to land.

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

The award was therefore a nullity.

The Senior Resident Magistrate's Court, Butali is a party to the proceedings herein. This case is therefore distinguishable from the case of **R V CHAIRMAN, LDT, KIRINYANGA DISTRICT & ANO. Exparte KARIUKI [2005] 2KLR** which was cited by Mr. Musiega.

The agreement that the award ceased to exist once it was adopted by the court cannot stand in view of the Court of Appeal decision in **ASMAN & ANO. VS FRANCIS BIKETI – CA KISUMU 157/01** wherein the Court of Appeal held as follows:-

“Orders made by the SRM's court and the tribunal are a nullity and were correctly quashed and vacated.....”

The application has merits and is allowed. Each party to bear own costs.

Delivered, dated and signed at Kakamega this 28th day of June, 2012

B. THURANIRA JADEN
J U D G E