



REPUBLIC OF KENYA

High Court at Kakamega

Judicial Review 54 of 2011

IN THE MATTER OF REPUBLIC APPLICANT

THE CHAIRMAN LAND DISPUTES TRIBUNAL

MUNICIPALITY DIVISION KAKAMEGA CENTRAL DISTRICT RESPONDENT

BETWEEN

JOHN EBU SHICHENJE INTERESTED PARTY

V E R S U S

WINSTON D. OKUMALI SHITOTE EX-PARTE

RULING

By an application dated 5th November 2011 the ex parte applicant is seeking an order of certiorari to issue directed against the Municipality Division Land Disputes Tribunal, Kakamega Central in relation to case no. 5 of 2011 that involve land parcel numbers **ISUKHA/SHIRERE/2010 – 2014** and **2154, 2155** and **2162**. Parties relied on their respective documents and filed written submissions.

The applicant's position is that the tribunal lacked jurisdiction to entertain the interested party's claim. The property was not registered in the names of the claimant but was in the name of his deceased father. The claimant did not produce letters of administration to prove that he was the legal administrator of his father's estate. The claim was intended to reverse the registration of some title deeds. The decision of the tribunal affects the rights of registered owners some of whom were not parties to the proceedings. On his part the interested party contend that the decision of the tribunal was proper as it only recommended that the High Court declare the title deeds as void for having been obtained fraudulently.

I have read the proceedings before the Land Disputes Tribunal, Municipality Division, Kakamega Central District in case number 5 of 2011. The complainant was the interested party herein and his claim was that his late father Christopher Shichenje MMasi died in 1984 and was the owner of plot number **ISUKHA/SHIRERE/1840**. After his father's death he did investigations and went to the lands office at Kakamega and found that the plot had been sub-divided into several other plots. His prayer before the tribunal was to be assisted to know how the transactions in relation to the original plot were done and that the titles be reversed. On his part the ex-parte applicant testified that he bought the land from the late Christopher MMasi Shichenje for KShs.5000/=. The land was sub-divided and his developments on the land is worth more than KShs.5 million. The tribunal's verdict was as follows:-

Verdict

According to the documentary evidence adduced, this tribunal, is persuaded that the SANCTITY of the Titles which came out of Isukha/Shirere/1840 as sub-divisions is highly questionable and possibly fraudulent. We therefore strongly recommend to the High Court, which has the mandate to declare null and void the following titles.

1. Isukha/Shirere/2110
2. Isukha/Shirere/2111
3. Isukha/Shirere/2112
4. Isukha/Shirere/2113
5. Isukha/Shirere/2114
6. Isukha/Shirere/2154
7. Isukha/Shirere/2162

That any aggrieved party has a Right of Appeal (ROA) within 30 days from the dated of this verdict.

Date: October 5th 2011

1. Lewis Kadivira - Chairman
2. Julius Liluma - Member
3. Kassim Sabwa - Member
4. Vincent Ashiundu - Member
5. Linus Max Sinatra - Member

From the verdict of the tribunal it is clear that the claimant was not awarded any land. The tribunal was aware that it lacked jurisdiction to declare the title deeds null and void and therefore referred the claimant to the High Court. An order of certiorari is intended to quash decisions made without or in excess of jurisdiction that have the effect of inconveniencing parties. In this case even if the decision of the tribunal is quashed the order to quash it would be of no effect. The claimant cannot use that decision to claim that there was fraud in relation to the original plot number **ISUKHA/SHIRERE/1840**. All that the interested party can do is to file a suit before the High Court and prove his case. The High Court will not be bound by the decision of the tribunal. The words used by the tribunal are that the sub-divisions were highly questionable and possibly fraudulent. That was not a verdict with finality and does not prejudice the applicant. Should the interested party pursue the matter through the court the applicant will have the opportunity to defend the suit. The verdict of the tribunal does not change the status quo on the ground. The Land Registrar cannot act on the verdict to reverse the sub-divisions of the original plot number 840 and the subsequent sub-divisions. The applicant's developments on the land are not in any danger as a result of the tribunal's verdict.

Having found that no prejudice will befall the ex-parte applicant as a result of the verdict of the tribunal, I do find that an order of certiorari is not available to the applicant. There is nothing to quash and the verdict of the tribunal is a mere advice to the interested party to refer the matter to a court with competent jurisdiction. The application lacks merit and the same is dismissed with no orders as to costs.

Delivered, dated and signed at Kakamega this 31st day of July 2012

SAID J. CHITEMBWE
J U D G E