

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

Judicial Review 66 of 2011

REPUBLIC.....APPLICANT

VERSUS

CHIEF MAGISTRATE KISUMU.....1ST RESPONDENT

CHAIRMAN KISUMU WEST.....2ND RESPONDENT

LAND DISPUTE TRIBUNAL.....3RD RESPONDENT

AND

JOHN ALARO.....INTERESTED PARTY

AND

CLIFF OBU.....EX-PARTE APPLICANT

CHARLES OBURA.....EX-PARTE APPLICANT

J U D G M E N T

The application by the ex-parte applicant is dated 5-1-2012 prays for the following orders:-

That this application be certified as urgent and be heard ex-parte and on priority basis.

That this honourable court be pleased to grant an order to the applicants in the nature of certiorari quashing the proceedings and decision of Kisumu West District Land Dispute Tribunal in Kisumu West District Land Dispute Tribunal Case No. 19 of 2010 dated 22-6-2011 and adopted as judgment by the Chief Magistrate's court Kisumu on 16-12-2011 in land dispute tribunal case No. 76 of 2011 ordering that KSM/Kadongo/2362 be sub-divided as follows:

From South to North measurements 164m by 27m by 164 by 39m be registered for John Alaro Awiti the remaining land remain for Cliffe Daniel Otieno.

Recommending that the present title deed in the name of Cliff Daniel Otieno be cancelled.

Ordering that Kisumu District Land Dispute Registrar to move to KSM/Kadongo/2362 and sub divide it as indicated above and give new registration to the parties.

That the court's adoption on 16-12-2011 as a judgment of the tribunal's award/decision made/dated 22-6-2011 in Kisumu West District Land Dispute Tribunal case No. 19 of 2010 and made as judgment by Kisumu Chief Magistrate's Court in Land Case No. 76 of 2011 respectively be declared null and void.

The applicant further prays that the costs of this application be granted to him.

It is supported by the verifying affidavit of Cliff Daniel Obura alias Cliffe Daniel Otieno sworn on 5-1-2012.

When this matter came up for hearing the learned state counsel acting for the respondents told the court that she was not opposed to the application. The interested party acting in person said that he had nothing useful to add as he had been awarded the suit property by the tribunal and later by the court.

From the pleadings, it is not in dispute that the suit property Kisumu/Kadongo/2362 is registered in the name of the ex-parte applicant. The tribunal on 22-6-2011 recommended that the said title be cancelled and part of the land be given to the interested party.

The now repealed Land Disputes Tribute Act under section 3 thereof does not grant the tribunal the

jurisdiction to cancel the title deed. The same acted ultra vires.
Without therefore going into the other meritorious issues raised by the applicant, I shall allow the said application. The applicant shall have the costs of this application.
Orders accordingly.

Dated, signed and delivered at Kisumu this 25th July, 2012

H. K. CHEMITEI
JUDGE

In the presence of:

.....for the state
.....for the applicant
.....for the interested parties
.....for ex-parte applicants

HKC/va