



REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 4 of 2009

REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN, LAND DISPUTES TRIBUNAL

LUGARI DIVISION

CHIEF MAGISTRATE – KAKAMEGA RESPONDENTS

AND

ROBERT BULIMO NYAHERA 1ST INTERESTED PARTY

PETER CHERUIYOT 2ND INTERESTED PARTY

BENJAMIN KIBET BERTON 3RD INTERESTED PARTY

EX-PARTE – JONAH SERONEY KIPKOECH

R U L I N G

The application by way of Notice of Motion dated 24.2.09 seeks orders as follows:-

“a) That an order of Certiorari do issue to remove into this court and quash the undated decision of the LUGARI DIVISION LAND DISPUTE TRIBUNAL REF. KAK/LUG/LUMA/CA3/2007 concerning Plot No. 620 (KAKAMEGA/LUMAKANDA/620) read on 26.11.2008 and subsequently any decision by the Chief Magistrate – Kakamega to (adopt) enter as judgment the aforesaid decision in KAKAMEGA CMCC AWARD NO. 173 of 2007.

b) That the Applicant’s costs of this application be paid by the interested parties jointly and severally.”

According to the statement of facts and the affidavits verifying the facts, the *ex-parte* applicant, JONAH SERONEY BERTON he obtained a portion of L.P. NO. Kakamega/Lumakanda/620 pursuant to a decree issued in KAKAMEGA HCCC. NO. 178/1987. That the title to L.P.NO. KAKAMEGA/LUMAKANDA/620 was closed following sub-division on 10.12.06.

That the applicants commenced proceedings before the Land Disputes Tribunal, Lugari Division concerning L.P. NO. KAKAMEGA/LUMAKANDA/620. That the said Tribunal ordered that the *ex-parte* applicant to transfer the land in question to the applicants; That the Interested Parties may move the

Lower Court to have the award of the Tribunal adopted.

The Ex-parte Applicant was represented by Gabriel Fwaya Advocate while the Interested Parties were represented by the firm of Gichaba Ondieki Advocate. The ex-parte applicant filed written submissions. The Interested Parties' Advocate did not file any reply to the application nor file submissions and did not appear on the hearing date.

I agree with the submissions of the Applicants' counsel that the Tribunal entertained a claim for specific performance and made orders for the transfer of the land contrary to the Provisions of Section 3 (1) of the Land Disputes Tribunals Act No. 18 of 1990 which states 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 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.”

The Tribunal's decision is signed by the Chairman and Secretary only. The composition of the panel violates the provisions of S.4 (2) of the Land Disputes Tribunals Act No. 18 of 1990.

No reasons were given for the Tribunals decision contrary to the provisions of Section 3 (8) of the Land Disputes Tribunals Act No. 18 of 1990.

Consequently, the application is allowed. Each party to bear own costs.

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

**B. THURANIRA JADEN
J U D G E**