



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

Judicial Review 17 of 2011

JANNES JUMA OLOO & OTHERS.....APPLICANT

VERSUS

SIAYA DISTRICT LAND DISPUTES TRIBUNAL & OTHERS.....RESPONDENT

J U D G M E N T

The applicant's notice of motion dated 3-5-2011 prays that:-

(1)The honourable court be pleased to grant the orders in the nature of certiorari, removing into this court for the purpose of being quashed the decision of the Siaya Land Disputes Tribunal dated 23-9-2009 which was upheld by the Nyanza Provincial land Dispute Tribunal Appeals Committee in its decision adopted as judgment by Kisumu SPM Misc. Appl. No. 26/2009 on 2-11-2010.

The application is supported by the affidavit of **Jannes Oloo** as well as the statement of facts. The substance of his application is that the deponent together with the 2nd and 3rd applicant are the registered proprietors of land parcel No. **Ugenya/Unyundo/673** while the 4th applicant is the registered proprietor of land parcel No. **Ugenya/Uyondo/674**.

When this matter came before the Land Dispute Tribunal at Siaya the interested party was awarded the parcels of land. The applicant's were dissatisfied and they proceeded to the Provincial Appeals Tribunal where the said tribunal in dismissing the applicant's appeal stated that:-

“Appeal dismissed. The verdict of the Siaya Land Dispute Tribunal is upheld. The Siaya Land District Registrar is hereby ordered to reposes the two title deeds i.e. Ugenya/Uyundo/673 and 674 and revert it to old title No. ugenya/Uyundo/493 and issue a new title deed to be issued to Brian Nungo Akwir measuring 50 ft by 274 ft. The remaining portion is to be given to the appellants”.

The interested party has supported the tribunal decision. According to him he has stayed in the suit property for over 36 years and thus he has a claim over the said land.

His replying affidavit sworn on 20-10-2011 further avers that the applicant's allegations that he has no **locus standi** as he has not obtained letters of administration in respect to the estate of his father the late **Clement Nungo Akwir** is untenable since he has been the one using and residing on the land.

Having perused all the pleadings by the parties, the law governing Land Disputes Tribunal is the now repealed chapter 303 A of the Laws of Kenya. The same clearly provides the mandate of the Tribunals. Section 3 (1) thereof provides its jurisdiction thus:-

“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”.

Although the interested party could be having a legitimate claim over the suit properties, the proper forum was not through the tribunal which did not have the mandate to adjudicate over a registered parcel of land. The orders issued by the tribunal demanding the cancellation of the titles were orders in vain. Both the tribunal at Siaya and the appellant tribunal acted *ultra vires*.

The upshot of this is that the application dated 3-5-2011 is allowed with costs to the appellant's.

Dated, signed and delivered at Kisumu this 15th day of October 2012

**H.K. CHEMITEI
JUDGE**

In the presence of:

Otieno for Opondo for the applicant

Ayone for Kadera for the respondents