



REPUBLIC OF KENYA

High Court at Kisumu

Miscellaneous Civil Application 11 of 2010

JAMES ARNUM OTAMBOAPPLICANT

VERSUS

SIAYA LAND DISPUTE TRIBUNALRESPONDENT

AND

DAVID AWUONDO OTEKRAINTERESTED PARTY

JUDGMENT

By the Notice of Motion dated 8th February 2010 the applicant prayed for the following orders:-

- 1) That this Honourable Court be pleased to grant the applicant Orders of Judicial Review in the nature of Certiorari quashing the award by the respondent in the Siaya Land Dispute Tribunal Case No. SYA / 46/2008 filed by the interested party read and adopted in the Principal Magistrate's Court at Siaya in Land Dispute Tribunal case No. 66 of 2009 on the 15th day of October 2009 and the orders issued thereto for the purposes of being quashed.**
- 2) That this Honourable Court be pleased to grant the applicant orders of Judicial Review in the nature of prohibition directed at the Respondent or its employees assign, or any other person acting under his directive prohibiting him/her or them from executing the orders of Siaya Land Dispute Tribunal.**

The application has been supported by the affidavit of the applicant and the statements attached therewith. The basic argument raised by the applicant is that he is the registered proprietor of Land parcel number North Gem/Ludha / 1294, since 3rd November 1997. In the light of the above registration the respondent did not have the capacity to adjudicate over the said land.

The undated decision of the tribunal ordered that:-

- 1) The Otekra family, Benson Onyango Akivenda and Richard Otieno Amollo to jointly arrange to refund James Opiyo Opondo PN 1251 AND James Arunm Otambo PN 1294. The refund be arranged through the Provincial Administration or the District Magistrate's Court putting into consideration the time they have been utilizing the said lands as well as fixing the time frame for the refund.**
- 2) The Land Registrar to cancel the registration of James Opiyo Opondo PN 1351 and James Arunm Otambo PN 1294 and instead register the claimant Daniel Awuondo Otekra there on both of them.**

3) Right of Appeal within 30 days after adoption by the court on 15th October 2009.

The interested party apparently did not file any replying affidavit as I have been unable to get one in the court's record. However, the skeleton submission filed by his counsel raises issues which needs consideration by this court.

The interested party has urge this court to decide whether the decision being challenged by the applicant is that dated 6th March 2009 by the respondent or that dated 15th October 2009 by the Court.

From the records of the proceedings at the Lower Court I am unable to decipher where the date of 6th March 2009 by the tribunal came from. The order quoted earlier own in this proceedings was undated.

The now repealed Land Disputes Tribunal Act requires that the decision of the tribunal ought to be dated. In the absence of the same therefore I do take the date of adoption of that decision of 15th October 2009 to be the valid date.

Further the decision of the tribunal is rendered superfluous and of no legal consequences if the same is not adopted. The beneficiary unless he takes it to court for adoption becomes a mere piece of decision. The same is however granted teeth and or validity by the adoption by the court.

In light of my above observations I do find that time runs actually from the date of its adoption by the court and not when the same is pronounced by the tribunal.

Further since the order sought by the applicant is certiorari the same ought to be brought within six (6) months. The application was brought to court on 4th February 2010 which was within the six months period anticipated under the Rules.

I am further satisfied that contrary to the assertion that the applicant did not file the mandatory affidavit the same was filed in line with Order LIII Rule 3 (3).

The applicant equally on 21st January 2010, lodged the notice to the Registrar, contrary to the interested party's assertion. It was addressed to the Registrar and the same received by the court's registry a day before the Chamber Summons application for leave was filed. I do not know what else the applicant was supposed to do as in my considered opinion, if there is any further administrative action to be undertaken the same is out of the applicants hands.

Having reached my above observation I do not need to waste a lot of Judicial time as to whether or not the respondent acted justly or otherwise. Section 3 (1) of the Land Dispute Tribunal Act (now repealed) states:-

“3 (1) 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 vide Section 4”.**

Clearly a refund of any consideration is not the mandate of the tribunal neither is the cancellation or rectification of a register. They acted outside their mandate. They acted ultra vires.

I shall therefore allow the application dated 8th February 2010 with costs to the applicant. The said costs shall be shouldered by both the respondent and the interested party .

Dated, signed and delivered at Kisumu this 14th day of November 2012.

**H.K. CHEMITEI
JUDGE**

In the presence of:

P. J. Otieno for Applicant

Langat Miss for Respondent

Orengo for interested party

HKC/aao