



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

MISC. APPLICATION NO. 12 OF 2009

IN THE MATTER OF THE
REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN BUTULA LAND DISPUTES
TRIBUNAL.....1ST RESPONDENT

BUSIA PRINCIPAL MAGISTRATE COURT.....2ND
RESPONDENT

AND

JOHN OWOUR
ONDASI.....INTERESTED PARTY

AND

HELDA OBUOR ONYANGO.....EX-
PARTE APPLICANT

JUDGMENT

The application before the court is dated 22/10/2009 and was filed pursuant to the leave of this court granted to the ex-parte Applicant on 8/10/2009. The application through a Notice of Motion seeks an

Order of Certiorari to bring the decision of Butula Land Disputes Tribunal dated 18/5/2009 to this court to quash it. Sadly, the case under which the said decision was made, was not given a number.

It is noted that the Tribunal made the decision in respect to parcels of land known as L.R. Nos. Marachi/Bumala/87, 88, 1502,2032 and 2035. The typed copy of the proceedings of the Butula Land Dispute Tribunal indicates at the top of the first page, the following:-

“ Material Facts:

Wrong succession: Fraudulently sold/bought. I claim all parcels of land mentioned above meant for my late father Thomas Ondasi Orongyi...”

Then at page two, the claimant before the tribunal who is the interested party herein ie John Owour Ondasi, stated thus:-

“ Now Helder Obwari secretly proceeded (with) the succession of the two partners – Musumba Oronyi and her husband Ibundo Okoth. This succession was done fraudulently as it did not involve the families of two interested parties of Musumba Oronyi.....”

Finally, the Tribunal then concluded in their judgment found on the second last page of its proceedings as follows:-

“Having had and considered the presentations of all the partieswe hereby decide as follows:-

- 1. That the boundaries planted on the visitation day by the Butula Land disputes Tribunal panel members to remain intact.....**
- 2. The government surveyor to confirm the boundaries on the ground according with the following names” (7 names given).**

It is the above decision of the Butula Land Disputes Tribunal which the ex-parte applicant seeks to have quashed on the grounds that :-

“ (a) The Tribunal had no jurisdiction to deal with the registered land to subdivide it and fix new boundaries as it did since that was contrary to section 3(1) of the Land disputes Tribunal Act No.18 of 1990.

(b) That the Tribunal gave no reason for its judgment as per requirement of section 3(8) of the said Act.

(c) That the Tribunal failed, to properly sign and date its award contrary to the same provision of Section 3(8).

(d) That the claimant/interested party who claimed through his deceased father failed to establish that he held a grant of letters of Administration to the estate of the deceased.

(a) That the Tribunal adjudicated on pieces of land L. R. Nos Marachi/Bumala/2034, 2035 and 1502 registered independently in three 3rd parties who were not joined as parties contrary to rules of natural justice.”

I have carefully perused and considered all the material presented in support of this application. I have come to the conclusion that the Butula Land Disputes Tribunal handled the claim before it in such a manner that it fixed new boundaries on the pieces of land cited herein including the L.R. Nos Marachi/Butula/87, 88, 1502, 2032 and 2035. The Tribunal thus entertained substantively land claims in respect of which it has no jurisdiction under the Land Disputes Tribunal Act, Act 18 of 1990. The Tribunal indeed purported to disregard or interfere with substantively registered rights under the Registered Land Act, Cap 300 of the Laws of Kenya.

Further more the composition of the Tribunal as shown in its proceedings was of nine members. Although at the end of the said proceedings only 3 signed the award. Both the composition and the number who signed the award was illegal in the circumstances of the case. That rendered the proceeding null and void.

It is also clear that the claimant, the interested party herein, had not taken out the grant of letters of administration to his deceased's father's estate. He therefore had no locus standi to sue on behalf of the estate, even if he were proved to be a beneficiary.

The Interested Party did not oppose these proceedings in any meaningful manner. He failed to file any replying affidavit. He also failed to file written submission despite being given ample opportunity by the court to do so.

In the above circumstances this application succeeds. The decision of the Butula Land Disputes Tribunal made on 18/2/2009 relating to the pieces of land known as L.R. Nos Marachi/Bumala/87,88,1502,2032 and 2035 is hereby recalled to this court and forthwith ordered quashed. An order of Certiorari to the same effect, shall forthwith issue accordingly.

Costs are to the Ex-parte applicant. Orders accordingly.

Dated and delivered at Busia this 10th day of February 2011.

D. A. ONYANCHA

JUDGE