



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA

AT KITALE.

MISC. CIVIL APPLICATION NO. 13 OF 2010.

REPUBLIC.....APPLICANT.

VERSUS

LIKUYANI LAND DISPUTES TRIBUNAL COMPRISING

OF:-

ROSE WANDERE & 2 OTHERS.....1ST RESPONDENT.

THE ATTORNEY GENERAL.....2ND RESPONDENT.

JOHN B. WAFULAINTERESTED PARTY.

CICILIA NASAMBO.....APPLICANT.

RULING.

1. The exparte applicant filed a notice of motion dated 9th March, 2010 seeking for an order of certiorari to remove to this court for purposes of quashing the decision of Likuyani Land Dispute Tribunal which was adopted vide Kakamega CMCC Land Case Award No. 23 of 2008 on 25th September, 2009. This application is predicated on the grounds that the tribunal overstepped their powers in determining a matter that falls under the provisions of the Registered Land Act. The tribunal also exceeded their mandate by determining the interest of other parties who were not part of the proceedings. Further the tribunal had no powers to give an order that one acre of land to the interested party which was to be excised from the exparte applicant's title no. Kakamega/Kongoni/141. That order interfered with the exparte applicant's proprietary interests as a registered owner of the suit premises. This application is also supported by the affidavit of the exparte applicant as well as the statement of facts.

2. This application was served upon the respondents and the interested party but they did not appear. None of them entered appearance or filed any documents. This application seeks for discretionary

remedies which can be granted on the basis of clear evidence of abuse of power, excess in exercise of jurisdiction or on the grounds that the Tribunal that made the decision did not observe the rules of natural justice. In this case, the exparte applicant claim is that the tribunal exceeded its jurisdiction when the elders made the following orders which were also made the decree of the court. The order states that:

(i) The District Land Registrar in conjunction with the District surveyor to carry out the necessary demarcation of boundaries and issuance of the title deeds to all those who are residing on plot KAK/KONGONI/141 also known as KAK/KONGONI/2219, thereby legalizing their ownership.

(ii) The Likuyani land control Board to be notified of the exercise before the Title Deeds are issued. The District survey also to determine the correct acreage for each occupant on plot No. 141 Kongoni. The claimant to fully co-operate in the exercise.

3. The above order has to be looked at against the provisions of section 3 of the Land dispute Tribunal, which is the instrument that gives power to the Tribunal to hear and determine disputes of civil nature relating to land. Under section 3 of the Act:-

(a) **The division of or determination of boundaries of land, including land held in common.**

(b) **A claim to occupy or work land.**

(c) **Trespass to land.**

4. Going by the above award, the tribunal has no jurisdiction to order the Land district Registrar and the District Surveyor to demarcate plot No. KAKAMEGA/KONGONI/141 also known as KAKAMEGA/KONGONI/2219 and also to issue title deeds regarding the exparte applicant's property. This was an exercise in excess of the Tribunals' jurisdiction and that decision renders itself for quashing.

For the above reasons, I allow the application and quash the decision that was adopted on 8th October, 2009. This judgment is to be served upon Likuyani Land Disputes Tribunal as well as the exparte applicant. There will be no order as to cost as the interested party did not enter appearance.

Judgment read and signed on this 25th day of March, 2011.

M. KOOME.

JUDGE.