



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

JUDICIAL REVIEW APPLICATION NO.9 OF 2010

IN THE MATTER OF AN APPLICATION FOR AN ORDER OF CERTIORARI

BETWEEN

REPUBLIC.....APPLICANT

=VERSUS=

BUDALANGI LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

OUNDO OWADE MAMBO.....INTERESTED PARTY

AND

ODERO MUHAHALA OMBWAYO.....EX PARTE

J U D G E M E N T

The matter before the court is a Notice of Motion dated 9.8.2010 filed by the *Ex Parte* Applicant, seeking a judicial Order of Certiorari to quash a decision or award of the Budalangi Land Disputes Tribunal made on 26.2.2010 and adopted by Busia PM Court Land Case No.33 of 2010.

The 1st ground on which relief is sought is that the Tribunal acted in excess of its jurisdiction by entertaining a claim based on fraud and claiming rectification of the register to transfer the parcel of land the subject of the suit, L.R. No. Bunyala/Bulemia/817, from Odero Muhahala Ombwayo, to the Interested Party, Oundo Owade Mambo.

I have examined the award by the Land Disputes Tribunal. On the last page of the proceedings, it stated thus:-

***“Oundo Owade’s statement as well remains that his forefathers gave him and if Odero’s contention can be backed on as being true, then Oundo Owade by condition of ADVERSE POSSESSION has a legal right to claim the land as his. It is all along clear that Odero Mukhakhala vigilant as he was, capitalized on Oundo Owade’s ignorance and acquired this land fraudulently.*”**

AWARD

The Tribunal therefore recommends that the District Land Registrar, Busia considers Oundo Owade as the legal proprietor of the land registered in Bunyala/Bulemia parcel No 654, 813 and 817.”

There is no doubt in this court’s mind that the Tribunal’s award ordered the Land Registrar Busia to transfer the pieces of land above mentioned to Oundo Owade. The Land register as shown by certificates of official searches confirms that the parcels of land above were all registered in the name of the *ex parte* applicant herein Odero Muhahala Ombwayo. This means that the Budalangi Land Disputes Tribunal entertained an issue and purported to transfer the beneficial substantive interest in the registered land contrary to the provisions of Section 159 of the Registered Land Act, Cap 300 of the Laws of Kenya which gives such jurisdiction to the High Court and occasionally to the Resident Magistrate’s court.

In the view and finding of this court the tribunal had no such jurisdiction and acted without or outside its jurisdiction in respect to L.R. No Bunyala/Bulemia/817.

In so far as Bunyala/Bulemia/813 is concerned, the title at the relevant time was registered in the names of Odongo Muhahala and Obwayo Odongo. Evidence on record reveals both were deceased. However the Interested Party did not show that he had a grant of letters of Administration to give him locus standi to pursue any claim in the Tribunal.

Similarly, a similar situation apartained in respect to L.R. No Bunyala/Bulemia/654 in which three people – Oundo Owade, Dedan Odero and Neima Odero were registered as owners but were not made parties in the Tribunal case, to be given a chance to defend their rights in accordance with the rules of natural justice.

In my finding, the Tribunal had no jurisdiction to deal with the substantive beneficial interest in the titles to transfer them to the Interested Party as it did. This is besides acting against the rules of natural justice by failing to give the registered owners or their legal representatives a right to be heard or defend their rights.

For the reasons above, this application has merit and will succeed. An order of Certiorari shall forthwith issue quashing the award of the Budalangi Land Disputes Tribunal purporting to transfer any of the above titles from the registered owners to the Interested Party, with costs to the Ex Parte applicant. Orders

accordingly.

Dated and delivered at Busia this 13th day of June 2011.

D.A. ONYANCHA

JUDGE.