



REPUBLIC OF KENYA.
IN THE HIGH COURT OF KENYA AT BUSIA
JUDICIAL REVIEW CASE NO. 77 OF 2010
IN THE MATTER FUNYULA LAND DISPUTE NO. 34 OF 2009
AND
IN THE MATTER OF BUSIA P.M LAND ADOPTION
CASE NO. 44 OF 2010

REPUBLIC APPLICANT

VERSUS

FUNYULA LAND DISPUTES TRIBUNAL 1ST RESPONDENT

THE PRINCIPAL MAGISTRATE – BUSIA 2ND RESPONDENT

AND

STEPHEN OUMA DELI EX PARTE

JUDGMENT

The application before the court is the Notice of Motion dated 14.7.201 filed by the Exparte applicant Under Order 53 of the Civil Procedure Rules. He seeks the Judicial Orders of Certiorari and costs.

The Order of Certiorari sought is intended, if issued, to remove into this court for quashing the Funyula Land Disputes Tribunal decision in case No.34 of 2009 relating to L.R No. Samia/Wakhungu Odiado/650 as adopted by the Busia Principal Magistrate Land Case No. 44 of 2010. The decision purported to revoke the title to the above mentioned title from Alfred Wanjiri Rajula so that the same would go to and be registered in the names of Alfred Wanjiri Rajula jointly with Stephen Ouma Deli. The Tribunal in the process recognized and awarded Stephen Ouma Deli's long and adverse possession on the said parcel of land. The Tribunal also purported, not only to subdivide the title into two but in the alternative purported to create a jurisdiction upon the Minister of Lands to carry out what the Tribunal could not achieve by their said order, in case the order is not carried out.

When the Notice of Motion came up for a hearing, the Ex Parte Applicant and the Interested Party agreed to proceed by written submissions within a prescribed period. At the end of the periods prescribed the Interested party indicated to the court that he was not interested in filling any submissions.

The Ex Parte applicant, on the other hand, submitted that the Tribunal acted ultra vires its powers under Section 3(1) of Land Disputes Tribunal Act, Act No. 18 of 1990, in that it purported to deal in a claim pertaining substantive beneficial interest in land.

I have carefully perused the order made by the Tribunal which order is the one impugned herein. I have no doubt the Tribunal's order, indeed, is one which attempts to deal with substantive beneficial interest in registered land which is power the Tribunal lacks. Its above mentioned decision, as adopted by the Principal Magistrate Busia in aforecited cases, cannot therefore be left to stand.

This application accordingly has merit and succeeds for the reason above discussed. The court finds no need to deal with other grounds raised by the Ex Parte applicant.

The result is that the Tribunal's award undated as adopted by the Principal Magistrate, Busia in Land case No. 44 of 2010, shall be recalled to this court forthwith, and be quashed by an order of Certiorari to issue forthwith.

Orders accordingly.

Dated and delivered at Busia this 24th day of August 2011.

D.A ONYANCHA

JUDGE