



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

MISC.APPLICATION NO. 8 OF 2010

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

BETWEEN

**REPUBLIC.....APPLICAN
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VERSUS

**AMUKURA LAND DISPUTES
TRIBUNAL.....RESPONDENT**

AND

**NELSON JAKAIT INAPA.....INTERESTED
PARTY**

AND

**MOFFAT OKISAI OMUNYINI
LAWI EMUKULE.....EX PARTE
APPLICANTS**

JUDGEMENT

The application before the court is a Notice of Motion filed by the Ex Parte Applicants dated 19.7.2010. It seeks an Order of Certiorari directed at the Interested Partycalling into the High Court for quashing their proceedings and decisions contained in the Respondent's Award as adopted on 11.5.2010 in Busia Principal Magistrate's Court Land Dispute No.28 of 2010.

The Tribunal's decision was over a parcel of land known as L.R. No.South Teso/Osurette/121. It was to the effect that a piece measuring 3.8 Ha of the said land be cut off from the said piece of land registered in the names of the Interested parties and be registered in the names and ownership of the two sons of John Onyait Inapa.

The record shows that L.R. No. South Teso/Osurette/121 was subdivided earlier to produce South Teso/Osurette/1065 which was really the parcel in issue and before the Tribunal.

The Tribunal appears to have accepted that L.R. No.STeso/Osurette/1065 was produced from L.R. No. South Teso/Osurette/121 and that although it was presently registered in the name of one Francis Aggrey O. Israel.O, who was deceased at the relevant time and was accordingly not a party.

It is also noted from the facts on record that the Ex Parte Applicants Moffat Okisai Omunyin and Law Omukule, were at the time of filing this suit, without a grant of letters of administration to either the estate of John Inyait Inapa, deceased in whose name L.R. No.South Teso/Osurette/121 or Francis Aggrey O. Israel O. the registered owner of L.R. No. South Teso/Osurette/1065.

The Ex Parte applicants were of the view that the Tribunal had no power to entertain the suit and had no power to order that L.R. No. South Teso/Osurette/1065 be transferred and be registered in the names of the sons of late John Onyait as sought by the Interested Party.

I have carefully considered the issues before me. It is my view and finding that the Tribunal no power to order that L.R. No. South Teso/Osurette/1065 be transferred to the sons of John Onyait, and any order to that end, was beyond the power of the said Tribunal under Section 3(1) of the Land Disputes Act, Act No.18 of 1990.

Further and in the alternative, the Interested Party, Nelson Jakait Inapa who filed the suit, had no capacity to do so because he had neither taken out a grant of letters of administration to the estate of either Francis Aggrey O. Israel O. the registered owner of L.R. No.1065 to the estate of John Onyait Inapa, the registered owners of L.R. No.121 a forestated.

In respect of both situations, the suit was a nullity and should be quashed.

The result is that an order of Certiorari hereby issues removing the Tribunal's award to this court for quashing forthwith.

Orders accordingly.

Dated and delivered at Busia this 29th day of September 2011.

D.A. ONYANCHA

JUDGE