



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

JUDICIAL REVIEW NO. 22 OF 2010

**REPUBLIC EX PARTE.....1ST
APPLICANT**

**ISAKA OGUSO OKUMU..... 2ND
APPLICANT**

VERSUS

**KISUMU WEST DISTRICT LAND DISPUTE TRIBUNAL.....1ST
RESPONDENT**

**SENIOR RESIDENT MAGISTRATE MASENO.....2ND
RESPONDENT**

R U L I N G

The applicant moved to the seat of justice via a chamber summons dated the 7th day of May 2010, and filed the same date seeking leave of court to apply for an order of certiorari to remove into this court the ruling of Kisumu West District Land Disputes Tribunal dated 6th day of April 2010 in land case number 357 of 2006 for the purpose of its being quashed and that the grant of leave operate as a stay of further proceedings and that costs be provided for.

The leave was granted on the same date of 7-5-2010 and the substantive application was dated 27-5-2010 and filed on the 28th day of May 2010 seeking the same substantive relief. The grounds are set out in the body of the application, verifying affidavit and statement of facts and a perusal of the same reveals the following:-

- That land parcel number Kisumu/Karateng/1084 is registered in the name of a deceased person Gerishon Okumu.
- That the deponent has knowledge that during the life time of the deceased title holder, two of his sons built on this land with no objection being raised by the deceased who had knowledge that although the land was registered in the deceased’s name, the same was family land.
- Vide paragraphs 7,8,9,10,11,12,13,14,15,16,17 and 18 that a portion of the said land was reserved for the interested party, that the deceased title holder died before sub division, that the late deceased died in 2002, that trouble stated in 2006 when the interested party sought help from the area chief to enable him claim the whole land because it was registered in his own name, that it is the applicant who went to the land disputes tribunal seeking to settle the issue of occupation between the interested party and the deponents sons.
- That he has become aggrieved because the tribunal ruled that the land belonged to the interested party and that he should seek succession.

- **He is further aggrieved because the decision to evict them was taken before they were heard on their defence.**

There is a replying affidavit sworn by the interested party James

Magwana Omondi deponed on the 6th day of October 2010. The salient points raised by him are as follows:-

- **Confirms that the applicant is the one who took the dispute to the Kisumu West Land Disputes Tribunal claiming an interference on behalf of the 2nd and 3rd applicant.**
- **Confirms the subject of the dispute is land registered as No. Kisumu/Karateng/1084.**
- **Confirms that the applicant wanted sub division of the said land.**
- **Confirms that the land is fully registered in the name of his deceased father.**
- **That he has not obtained a grant of representation of the estate of his deceased father.**
- **That the tribunal made the right decision by dismissing the claim.**

The applicant filed submissions dated 16th day of February 2011

and the following are highlighted :-

- **Confirms the applicant sought subdivision of the suit land.**
- **That the applicant went to the tribunal because the interested party was reluctant to have the property sub divided.**
- **Contends that by the tribunal ordering eviction of the 2nd and 3rd applicants, before being heard, this was in breach of the rules of natural justice. Also by ordering succession and removal of the caution placed on the land, the said tribunal exceeded its mandate under section 3 of the land disputes Act which mandates it to deal with disputes relating to the division of or the determination of boundaries to land inclusive of land held in common, a claim to work or occupy land and trespass to land.**
- **Contends that in ruling in the manner ruled on matters of succession and ownership of land hence the decision cannot hold.**
- **The evidence reveals that the 2nd interested party has been in peaceful and quiet occupation of the said land for 16 years while the 3rd applicant has been in occupation of the same land for the last 12 years and by reason of these, they have the rights of adverse possession with a right to be registered as owners.**
- **Contends the interested party has not denied the right of occupation by the applicants in the manner stated, neither has he denied that the 2nd and 3rd applicants were not parties to the proceedings before the tribunal.**

The submission of the interested party are dated 10th day of March 2011, and the following have been highlighted:-

- **That from the content of the proceedings, the applicant went to the tribunal seeking a verdict and since he was given one, he cannot complain.**
- **That the only reason the applicant is complaining is because the decision was not in his favour.**
- **The tribunal was entitled to advise the interested party to take out a grant because none had been taken out.**
- **Contends there was no excess mandate on the part of the complainant raised by the applicant.**
- **That the entire proceeding is not illegal. This court can sever the portion relating to dismissal and leave the other portion to be confirmed.**

The court has given due consideration to the rival arguments

herein in the light of the totality of the facts before this court and the court proceed to make the following findings on the same:-

- (1) There is no dispute that it is the applicant who sought the relief from the tribunal to seek subdivision of the subject land.**
- (2) It is also not disputed that as at that time, he was aware that the registered owner of the land had passed on and the interested party had not taken out a grant of representation to the estate of the deceased.**
- (3) There is also no dispute that the land is registered.**
- (4) Also no dispute that the mandate of the tribunal is well spelt out in the creating statutory.**

For the reasons of what has been stated above in number 1-4, the entire proceedings that took place before the tribunal is an exercise in futility and a nullity for the following reasons:-

- (a) Since the land was registered, the tribunal had no mandate to adjudicate over it.**
- (b) The moment the applicant knew the title holder was deceased, the only forum to adjudicate over those issues was a court of law via a succession cause.**
- (c) So long as the interested party had no title in his name, on account of him not having taken out a grant of representation to the estate of his late father, no orders could be issued against them.**

For these reasons, the prayer in the notice of motion dated 27-5-2010 and filed on the 28th day of May 2010 is allowed on account of the entire proceedings having been a nullity and therefore are quashed.

(2) Since it is the applicant who sought relief from a wrong forum and dragged the interested party into those proceedings which resulted in the proceedings herein, the applicant will pay costs to the interested party.

Dated, read and delivered at Kisumu this 23rd day of September 2011.

**ROSELYN N. NAMBUYE
JUDGE**

RNN/va