



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

JUDICIAL REVIEW NO. 34 OF 2009

REPUBLICAPPLICANT

VERSUS

LAND DISPUTE TRIBUNAL1ST RESPONDENT

CHIEF MAGISTRATE2ND RESPONDENT

AND

JOASH ELIAKIM OSEWE.....INTERESTED PARTY

RULING

The Applicant brought this application dated 7th December 2009 praying for the following orders:-

- (1) That this court be pleased to grant order of Certiorari to remove into this court the decision of the Kisumu East /West Land Dispute Tribunal No. 34 of 2009 dated 22nd October 2009 to quash the same and also quash magistrate decision of 11th November 2009 made in CMCC Land case No. 74 of 2009 with a view to quashing the same.
- (2) That the court be pleased to prohibit the land registrar Kisumu East /West District from registering the interested party herein Michael Otieno Majimba as the proprietor of land parcel number Kisumu / Nyalenda “B”/ 2008.
- (3) That the court further be pleased to issue prohibition orders stopping the said respondent from taking over, occupying using and or generally using the land parcel number Kisumu / Nyalenda “B”/ 2088 in the manner inconsistent with the proprietary rights of the applicant.
- (4) That the costs of this application be provided for.

The said application is supported by the affidavit of **Elphas Muzotso Lugose**.

I have read the said application together with the attendant documents. The 1st respondent on 15th October 2009 arrived on the following verdict-

“This Land Dispute Tribunal sitting at Kisumu East District Commissioner Boardroom believes beyond any reasonable doubt that pastor Joash Eliakim Otieno Osewe used undue influence and made Michael Otieno Majimba transfer to him Kisumu / Nyalenda “B” / 2088 and we hereby order Kisumu District Land Registrar to cancel the name of Elphas Muzotso Lugose from title number Kisumu / Nyalenda “B” / 2088 and re-register the same title Kisumu /Nyalenda /”B”/ 2088 to Michael Otieno Majimba. Right of appeal is allowed within thirty (30) days from the date of this decision at the Provincial Commissioner Office Kisumu”.

The 1st respondent’s powers are fully donated by Section 3 (1) of the Land Disputes Tribunal Act which are

- (a) **The division of or the determination of boundaries to land, including land held in common.**
- (b) **A claim to occupy or work land or**
- (c) **Trespass to land shall be heard and determined by a tribunal established under Section 4.**

I agree with the applicant's counsel that the tribunal acted *ultra vires* they had no jurisdiction to determine the ownership of land parcel number Kisumu /Nyalenda "B" / 2088. Neither did it have the capacity to order the rectification of the register. There have been plethora of authorities from this court and the Court of Appeal over the same.

In the premises I shall grant prayers 1 and 2 of the applicant application dated 7th December 2009. The parcel therein should however be amended to read Kisumu /Nyalenda "B"/2088 and not Kisumu /Nyalenda "B" / 2008. I suppose this was a typing error. I shall not grant prayer 3. The applicant shall have the costs of this application.

Orders accordingly.

Dated, signed and delivered this 2nd day of November 2011.

H. K. CHEMITEI
JUDGE

HKC/aa0