



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

MISC.CIVIL APPLICATION NO.54 OF 2009

**IN THE MATTER OF AN APPLICATION BY MICHAEL NYANGWESO WANGUDI FOR
ORDERS OF LEAVE OF THIS**

HONOURABLE COURT TO FILE ORDERS OF CERTIORARI AND PROHIBITIONS

AND

**IN THE MATTER OF THE DECISION AND FINDINGS OF FUNYULA LAND DISPUTE
TRIBUNAL CASE NO.27OF 2008**

AND

**IN THE MATTER OF BUSIA PRINCIPAL MAGISTRATE LAND DISPUTE NO.10 OF 2009
DATED 19TH MARCH 2009**

BETWEEN

MICHAEL NYANGWESO WANGUDI

VERSUS

BONFACE RESSA OBWAMO

REPUBLIC.....APPLICANT

VERSUS

**FUNYULA LAND DISPUTE TRIBUNAL.....RESPONDENTS
BUSIA PRINCIPAL MAGISTRATE**

AND

BONFACE RESSA OBWAMO.....INTERESTED PARTY

R U L I N G

The ex parte applicant Michael Nyangweso Wagundi brings these judicial review proceedings against the Respondents Funyula Land Disputes Tribunal and Busia Principal Magistrate seeking to quash the

Tribunal proceedings adopted as judgement by Busia Principal Magistrates court in L.D.C. No.60 of 2009. The interested party is names as Boniface Ressa Obwamo in favour of whom the Tribunal made the award.

The facts are that the ex-parte Applicant sold an undemarcated plot to the Interested party measuring 110 x 60ft in 1976. The parties did not have the plot surveyed and excised from the land Samia/Wakhungu-Odiado/647. In the year 2008, the Interested party filed case before Funyula Land Tribunal no.27 of 2006 claiming the portion he bought from the exparte applicant. The portion had been demarcated from the main title no.647 and given number 1065 the same year the plot no.1065 was transferred to one Fredrick Sanya Oluoch who was not a party to the Tribunal proceedings. The tribunal ordered revocation of title for parcel no.1065 in the name of Fredrick Sanya Oluoch and have it registered in the name of the Interested party. The ex-parte applicant was aggrieved by this decision and instituted these proceedings.

The Respondents did not file a reply to the application. The Interested party argued that the exparte applicant has no capacity to bring these proceedings because the land in issue is registered in the name of a third party.

The applicant argues that the tribunal had no jurisdiction and acted ultra vires by ordering revocation of the title.

The award of the tribunal was adopted as judgement by the Busia Principal Magistrate on 24/02/09. The jurisdiction of the Tribunal is contained in Section 3(1) of the Land Disputes Tribunal which is limited to:

a)the division of, or the determination of boundaries to land;

b) a claim to occupy or work land;

c) trespass to land.

Section 159 of the Registered Land Act, cap 300 confers jurisdiction on land registered under cap 300 to the court. The matters to be adjudicated upon by the High Court and the Lower Court depend on the value of the land as stipulated in the said provision. The suit premises herein was Samia/Wakhungu-Odiado/1065 which was registered under cap 300. By virtue of the land being so registered the tribunal lacked jurisdiction to arbitrate on the claim. Section 3 (1) of the Land Disputes Tribunal Act does not include a claim for ownership of land. The tribunal indeed was not possessed of the jurisdiction to arbitrate on the matter brought before it by the Interested party.

The decision of the Tribunal in respect of the dispute was void ab initio and incapable of being enforced under the law. The Interested party argues that the exparte applicant had no capacity to file the suit because the suit premises is registered in the name of a 3rd party. The Interested party sued the exparte applicant before the Tribunal in his capacity as the person who sold the plot to him. The tribunal made a decision or during the defendant to transfer to the Interested party a portion of the land measuring 110 x 60ft. The defendant was affected by the Tribunal's decision and is possessed of the capacity to apply that the decision be quashed.

The Tribunal proceeded to hear the case with full knowledge that the registered owner of the suit premises was another person other than the ex parte applicant. The registered owner ought to have been joined as a party even assuming that the tribunal had the powers to arbitrate on the matter.

It is my finding that the ex parte applicant has established that the Funyula Land Disputes Tribunal had no jurisdiction to hear the dispute in relation to the new parcel No.Samia/Wakhungu-Odiado/1065 or the original parcel L.R. no. Samia/Wakhungu-Odiado/647. I hereby declare the decision of Funyula Land Dispute tribunal void for all intents and purposed. The decision of the tribunal adopted as judgement by the court is hereby quashed as prayed. Costs of these proceedings and those of the Tribunal to be met by the Interested Party.

F.N. MUCHEMI J.

Ruling dated and delivered on the 6th day of December 2011 in the presence of Mr. Jumba for Exparte Application and Mr. Manwari for the Interested party.

F.N. MUCHEMI
J U D G E