



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

OF KISII

Miscellaneous Civil Application 43 of 2009

REPUBLIC.....APPLICANT

-VERSUS-

THE CHAIRMAN

NYAMUSI LAND DISPUTES TRIBUNAL.....1 ST RESPONDENT
AINYA NYAMASEGE.....2ND RESPONDENT
THE DISTRICT LAND REGISTRAR NYAMIRA.....3RD RESPONDENT
THE SENIOR RESIDENT MAGISTRATE NYAMIRA...4TH RESPONDENT

RULING

The factual position of this application is not in dispute. The *ex parte* applicant is the widow of the deceased Francis Makana Mogaka who was the registered owner of land parcel no. North Mugirango/Bomwagamo/154 measuring about 0.6 Hectares. The 2nd respondent lodged a dispute with Nyamusi Land Disputes Tribunal (1st respondent) claiming the land. The 1st respondent heard the dispute and, on 7/1/2009, determined that the land belonged to the 2nd respondent. It directed the cancellation of the register to enable fresh registration in the name of the 2nd respondent. The award was filed before the Senior Resident magistrate at Nyamira (4th respondent) who, on 16/4/2009, confirmed the same as decision of the court and issued a decree for execution.

Under *section 3 (1) of the Land Disputes Tribunal Act (no.18 or 1990)* the 1st respondent had no jurisdiction to entertain a claim regarding ownership of registered land and therefore the proceedings and decision made therein were null and void. (See *Jotham Amunavi .V. The Chairman Sabatia Division Land Disputes Tribunal and, Another, Civil Appeal no. 256 of 2002 at Kisumu*).

Secondly, when the 1st Repondent was accepting this claim to be heard the owner of the land (the deceased) was dead. His wife (the *ex parte* applicant) had no capacity to be sued as she had not taken out letters to administer her late husband's estate.

Mr. Soire for the 2nd respondent argued that the application was incompetent for non-compliance with *Order 53 rule 7 of the Civil Procedure Rules*. His case was that the order against which the applicant seeks that certiorari be issued has not been certified by the registrar. Rule 3 requires that notice of the application for leave be lodged with the registrar, and together with the notice should be lodged copies of the statement and affidavits. Rule 7 provides that a copy of the order sought to be quashed should also be lodged. The copy should be verified by affidavit. I agree with Mrs. Asati that the *ex parte* applicant complied with the requirements. The issue of the registrar certifying these documents does not arise. The definition of the "Registrar" in *section 2 of the Civil Procedure Act* includes the district registrar and deputy registrar. The documents were lodged with the deputy Registrar, High Court of Kenya at Kisii.

The application is hereby granted as prayed.

Dated, signed and delivered at Kisii this 20th day of January, 2010.

A.O.MUCHELULE

JUDGE

20/1/2010.

Before A.O.Muchelule-J
Court clerk-Bibu
Mrs. Asati for Applicant

Court: ruling in open court

A.O.MUCHELULE

JUDGE

20/1/2010