



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII
Miscellaneous Civil Application 72 of 2008

REPUBLIC.....APPELLANT
-VERSUS-
1. NYANZA PROVINCIAL LAND DISPUTES APPEALS COMMITTEE.....1ST RESPONDENT
2. THE SENIOR RESIDENT MAGISTRATE, RONGO COURT.....2ND RESPONDENT
3. THE DISTRICT LAND REGISTRAR MIGORI.....3RD RESPONDENT
4. PAUL OMOLO ARWA.....4TH RESPONDENT
EXPARTE
CHARLES OBUNGA AYALO.....APPLICANT

RULING

The Deceased Pilistah Awino Arwa alias Owino w/o Arwa died intestate leaving parcel of land Kamagambo/Kameji/264. On 18/10/2006 the certificate of confirmation of grant was issued by the Principal Magistrate's court at Rongo (2nd respondent) to the *ex parte* applicant. This followed the dismissal of the objection to the grant that had been filed by the 4th respondent. The applicant thereby inherited the parcel of land. It was open to the 4th respondent to challenge the grant on appeal to the High Court. He indeed filed an appeal which he, however, withdrew. He instead complained to Rongo Land Disputes Tribunal which on 1/11/2006 decided that the 4th respondent was the rightful heir who ought to have been granted letters of administration and to whom such letters should have been confirmed.

The *ex parte* applicant was aggrieved by the decision of the Tribunal and, as provided for under the Land Disputes Tribunals Act no. 18 of 1990, appealed to the Nyanza Provincial Lands Appeal Committee which, on 17/7/2008, confirmed the decision of the Tribunal. On 25/8/2008 the Chief Magistrate's court at Kisumu confirmed the award by the Committee.

The present application by way of Notice of Motion dated 9/1/2009 under the provisions of Order 53 rules 4(1) and 4(1) of the Civil Procedure Rules and sections 8 and 9 of the Law Reform Act seeks that the court issues an Order of Certiorari directed at the Nyanza Provincial Land Disputes Appeal Committee (1st respondent) quashing its decision and ipso facto the decision of the Land Disputes Tribunal at Migori which purported to revoke the letters of administration issued by the 2nd respondent. The court was also asked to issue an Order of Prohibition directed at 2nd respondent and the Chief Magistrate's Court at Kisumu prohibiting them from executing the decree or orders resulting from the Tribunal and Committee. There was further request for an Order prohibiting the District Land Registrar, Migori (3rd respondent) from implementing the decisions of the Tribunal and Committee, and prohibiting the 4th respondent from taking possession of the land above.

The service of the application did not elicit any response. The court listened to Mr. Okoth for the *ex parte* applicant as he prosecuted the case. The applicant's quarrel was that the 4th respondent ought to have appealed against the decision of the

2nd respondent instead of going to the Tribunal. His contention was that the Tribunal lacked jurisdiction to entertain the dispute after it was decided by the court, and also because the dispute involved ownership of land which falls outside the provisions of section 3(1) of the Act above.

I have considered the statement of facts, verifying affidavit and the annexures filed herein. It is my view that the application is incompetent as it was filed well over 6 months following the decision of the Land Disputes Tribunal at Migori. This was the primary decision that sought to undo what the court at Migori had determined. It is the decision which proceeded, without jurisdiction, to determine the ownership of this registered land. It is the Tribunal at Migori that purported to sit on appeal over the decision of the court at Rongo. This is a jurisdiction it did not have.

The consequence is that the application is struck out. The same was not defended. There will be no order as to costs.

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

A.O.MUCHELULE
JUDGE
20/1/2020

Before A.O.Muchelule-J
Court clerk-Bibu
Mr.Opanga for applicant
COURT: ruling in open court.

A.O.MUCHELULE
JUDGE
20/1/2010