



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**  
**Miscellaneous Application 32 of 2009**

REPUBLIC ..... APPLICANT

VERSUS

THE CHAIRMAN KISUMU EAST/WEST LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT  
THE CHIEF MAGISTRATE CHIEF MAGISTRATE'S COURT AT KISUMU ...2<sup>ND</sup> RESPONDENT

AND

ABSALOM WADEGU NYAORO OKWACH ..... INTERESTED PARTY  
STEPHEN MIYUNGI ODHIAMBO ..... EXPARTE

**RULING**

The Notice of Motion dated 27<sup>th</sup> February 2009 and filed herein on 3<sup>rd</sup> March 2009 seeks the following orders:-

- (a) **The Honourable court be pleased to issue and grant an order of certiorari removing and bringing into this court and quashing the decisions:-**
- (i) **of the Kisumu East / West Land Disputes Tribunal dated 8<sup>th</sup> October 2008 awarding land parcel number KSISUMU /KANYADWERA/1480 to Absalom Wadegu Nyaoro Okwach**
- (ii) **of the Kisumu Chief Magistrate's Court made on 28<sup>th</sup> January 2009 adopting the Kisumu East / West Land Disputes Tribunal's decision as a judgment of the court.**
- (iii) **an order reversing all and singular any transactions and /or instruments made subsequent and/or pursuant to the said decisions.**

The grounds in support of the application are contained in the statement of facts filed herein on 16<sup>th</sup> February 2009 and the verifying affidavit filed herein on 17<sup>th</sup> February 2009 deposed by the applicant, **Stephen Miyongi Odhiambo**.

Upon service of the application, the interested party, **Absalom Wadegu Nyaoro Okwach** filed his grounds of objection on the 9<sup>th</sup> July 2009.

The respondents i.e. the **Chairman, Kisumu East /West Land Disputes Tribunal** and the **Chief Magistrate's Court Kisumu** did not file any response to the application.

At the hearing on the 4<sup>th</sup> February 2010 only the applicant and the interested party appeared and argued their respective cases.

**Mr. Onsongo**, Learned Counsel appeared for the applicant while the interested party appeared in person. The thrust of the applicant's arguments was that the suit property was first registered on the 25<sup>th</sup> July 2000 in favour of the applicant but the interested party instituted a claim over it before the land Disputes Tribunal which went ahead to determine issues of ownership notwithstanding that the registration of the suit land under the Registered Lands Act

(RLA) was a first registration protected under Section 143 Registered Lands Act and that under Section 3 (1) of the Land Disputes Tribunal Act the Land Tribunal had no jurisdiction to deal with the matter since it involved proprietary rights. The applicant also argued that the interested party did not have the necessary “**locus –standi**” to litigate on behalf of his father and/or grandfather since he had not obtained grant of letters of administration.

The applicant contended that the adoption of the tribunal’s decision by the chief magistrate’s court was therefore in vain.

In his arguments, the interested party relied on his grounds of opposition and contended that he went to the Tribunal after the applicant “**stole**” his land. The tribunal heard the case and the land was given to him.

The interested party argued that the applicant was given the right to appeal to the provincial tribunal and ought to have gone there before coming to this court.

The interested party was of the view that if the tribunal made a mistake then it should be questioned by this court.

Having heard both sides, this court must first assure the interested party that the action undertaken by the land tribunal with regard to the material portion of land is already being questioned by way of this application.

The applicant is simply saying that the land tribunal had no powers to deal with the issue of ownership of the material land and having made a decision awarding the land to the interested party it exceeded its powers thereby rendering the decision null and void ab-initio.

The interested party however insists that the issue in question before the tribunal was occupation and use of the disputed land and hence within the provisions of the Land Disputes Tribunal Act number 18 of 1990 (See, paragraph 3 grounds of objection).

The interested party therefore contends that the tribunal acted within its powers and that the confirmation of its decision by the Chief Magistrate’s Court was lawful.

On the issue of locus-standi the interested party suggested that he acquired his interest in the land during his father’s life time hence the issue could not arise.

With regard to “**locus – standi**” this court observes that the issue was never raised by the applicant during the proceedings before the tribunal in which the interested party was the claimant while the applicant was the objector.

Not even during the cross – examination of the interested party by the applicant was the issue raised.

It was rather foolhardy therefore for the applicant to raise the issue herein. He is estopped from raising the issue in this application.

With regard to the jurisdiction of the tribunal it is notable that the subject property was land parcel Kisumu /Kanyadwera / 1480 which the interested party claimed as part of his property. The applicant objected to the claim. The dispute therefore centered on ownership of the land. This explains why the interested party contended at the hearing of this application that the applicant had “stolen” his land.

Indeed, the tribunal heard the matter and decided that the interested party be awarded the disputed parcel of land.

This is what the tribunal said:-

“On consideration of the above findings and failure by the objector to call a witness to support his statement the tribunal court has unanimously decided to award the parcel under dispute KSM/KANYADWERA / 1480 to the claimant as the objector failed to provide any tangible facts to support his hold on his land”

The jurisdiction of a land tribunal such as the one that dealt with this matter is derived from Section 3 (1) of the land Disputes Tribunal Act number 18 of 1990 which provides that:-

“Subject to this Act, all cases of a civil nature involving a dispute as to-

- (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”.

The jurisdiction conferred by the foregoing provision of the law does not extend to determining issues pertaining to the ownership of land and more so, where such land is lawfully registered under the Registered land Act and is a first registration.

Herein, the land in dispute was firstly registered on the 25<sup>th</sup> July 2000, in the name of the applicant.

The tribunal had no jurisdiction to decide on its ownership and award it to the interested part as it did on the 8<sup>th</sup> October 2008. As it were, the tribunal lacked the legal power or authority to hear the matter.

This court is therefore prevailed upon to uphold this application and grant the orders sought in terms of prayer (a) (i) and (ii) of the Notice of Motion dated the 27<sup>th</sup> day of February 2009.

It is accordingly ordered.

Dated, signed and delivered at Kisumu this 12<sup>th</sup> day of February 2010.

J. R. KARANJA

JUDGE

JRK/aa0