



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA
Judicial Review 6 of 2008

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REPUBLIC..... APPLICANT

-VERSUS-

**THE CHAIRMAN LAND DISPUTE TRIBUNAL BUSIA
MUNICIPALITY.....RESPONDENTS**

RULING

This is a Ruling on the application dated 21/02/07 brought under order LIII Rule 3 of the civil Procedure rules. It is a Judicial review application seeking for orders to remove into this court and quash the decision of the Busia Municipality and Disputes Tribunal Case no. 2 of 2007 adopted as Judgement on 05/04/07 in respect of land **BUKHAYO/BUGENGI/3143**.

The application is grounded on the affidavit of the exparte applicant and the statement of affairs.

Mr. Fwaya for the Exparte applicant argued the application. He submitted that the Tribunal had no jurisdiction to hear the matter since it is not so authorized by the law. The sale agreement relied on by the interested party was made in 1992 and the Tribunal Claim was lodged in 2006. The claim was therefore time barred under the limitation of Actions Act. The claimant who said she is the widow of a deceased person who had bought the land in issue had no capacity to sue.

The Interested party in her Replying Affidavit sworn on 26/05/09 avers that the Tribunal had jurisdiction to hear the claim which involved ownership and working on land. She said the applicant is her biological father who sold to her a portion of his land and hat she claims part performance of the contract. She also claims to be entitled to a share of the Applicant's estate.

The jurisdiction of the land Disputes Tribunal as conferred by Section 3(1) is restricted to trespass, claim to occupy and work on land, and/or to determine boundaries. The claim lodged in the Tribunal was for a portion of land which had been bought by the father in-law of the Interested Party. The Interested party claimed ownership of that of land. She said in here evidence

“I need the whole of this land”

The Tribunal ordered that the said land measuring 0.921 Ha he transferred to the Interested party **BEATRICE NABWIRE OJIAMBO** on payment of the balance of the purchase price to the Applicant being Kshs. 14,000/=

The land in issue **BUKHAYO/BWAGENGI/3143** is registered land as shown by a copy of official search dated 02/10/07. The Tribunal has no Jurisdiction to deal with land registered under Cap. 300 or under any other Statute. Any disputes arising in relation to registered land ought to e heard by the court. The Tribunal therefore had in jurisdiction to hear the claim and to award the land of the applicant to the Interested Party. It also had no jurisdiction to order that the balance of the price be paid.

The decision of the Tribunal in land case No. 2 of 2007 as adopted by Busia Principal Magistrate is therefore null and

void.

The counsel for the Applicant raised the issues of lack of capacity on part of the Interested Party and the fact that the claim was time barred. I totally agree that the Interested party required letters of Administration Intestate to pursue legal interests of the deceased. She admitted she did not have that authority to sue. The cause of action arose in 1992 and was filed before the Tribunal 14 years later. It was therefore time-burred. However, these two issues are not important in any application of this nature. It is the jurisdiction of the Tribunal that carries the day to enable this court to determine whether the orders it made were made within the law.

I find the application merited and I allow the same as prayed. The decision of Busia Municipal Land Tribunal as adopted by the court is hereby moved to this court and quashed accordingly. Costs of this application to the Ex parte applicant.

F.N. MUCHEMI
J U D G E

Ruling dated and delivered on this 2nd day of February 2010.

In the presence of Mr. Fwaya for the Ex-Partie applicant.