



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
MISCELLANEOUS APPLICATION 7 OF 2008

REPUBLIC.....APPLICANT

VRS

THE CHAIRMAN LAND DISPUTE

TRIBUNAL NAMBALE DIVISION.....RESPONDENT

AND

PATRICK OMALWA AGWATA.....INTERESTED PARTY

EX-PARTE

JOHN OKIRU AGWATA.....EX-PARTE

RULING

This is a judicial review application for orders of certiorari to remove into this court and quash the decision of the Land Dispute Tribunal, Nambale Division in tribunal case no.10 of 2007 made on 8/11/2007 and adopted as judgment by the Busia Senior Principal Magistrate in Land Dispute No.84 of 2007 concerning L.R. Number Bukhayo/Kisoko/4889, 5808 and 5809. It also prays for an order that the Interested Party meets the cost of this application.

I have considered the arguments of the two counsels, Mr Kwaya for Ex-parte Applicant and Mr. Miano for Interested Party. The Applicant challenges the tribunal's decision for lack of jurisdiction. Secondly for the reason, that the Interested Party had no cause of action because his claim was on L.R. Bukhayo/Kisoko/4889 whose title had been closed for subdivision before the dispute was filed in the tribunal.

The Interested Party argues that since the award was adopted as judgment of the court, the Ex-parte Applicant ought to have gone on appeal instead of filing a judicial review application. This application ought to be pursued against the chairman of the tribunal who made the decision and not against the Interested Party. Finally that the tribunal had jurisdiction to hear the matter since it concerned determination of boundaries.

The jurisdiction of the tribunal is conferred by section 3 (1) of the Land Disputes Tribunal Act. The claim before the tribunal was for the Interested Party to be given a portion of L.R. Bukhayo/5808. He was the registered owner of parcel number 5809 while his brother, the Applicant owned parcel no.5808. The original parcel no.Bukhayo/Kisoko/4889 belonged to their father who sub-divided it between his two sons. The Interested Party's claim is that he was given a smaller portion and wanted a part of his brother's

parcel excised and added to him.

The tribunal proceeded to hear the matter and ordered that 1.4 hectares of the Ex-parte Applicant's land be given to the Interested Party.

Section 3 (1) of the Act only empowers the tribunal to deal with the following disputes:

- a) trespass to land
- b) determination of boundaries
- c) claim to work land

The tribunal has no jurisdiction to deal with disputes relating to registered land. The Interested Party's claim related to title to land and to land registered under the Registered Land Act. It was not a claim of determination of boundaries as argued by the Interested party. The chairman of the tribunal was joined in this application and duly served. The Interested Party is the one who filed the dispute before the tribunal. He was rightly joined in this application.

The Orders made by the tribunal were in excess of its jurisdiction and are therefore null and void. The Ex-parte Applicant has used the correct procedure to seek a remedy in way of judicial review. The Interested Party argued that once the award is adopted as an order of the court, the right procedure is for the aggrieved party to appeal. If the award of the tribunal is a nullity for want of jurisdiction, the action of adopting it as a court order is also void ab initio. The adoption cannot give the award any legal force to justify lodging an appeal by an aggrieved party. The award whether adopted as a court order or not remains an illegality. The way to go for an aggrieved party is to seek to quash the award itself. Once the order to quash it is granted, it quashes the award as adopted by the court.

I find the application merited and I allow the prayers sought as prayed.

F. N. MUCHEMI

JUDGE

Dated, Delivered and Signed at Busia this 2nd day of February 2010. In the presence of Mr. Fwaya for applicant and Mr. Onsongo for Miano for Interested Party.