



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Miscellaneous Civil Application 4 of 2008

JOSEPH MIKEYA KHATONJI APPLICANT

VERSUS

**THE CHAIRMAN, SHINYALU LAND
DISPUTES TRIBUNAL.....RESPONDENT**

AND

ENOCK SHISIALI KHASEBULA ----- INTERESTED PARTY

R U L I N G

The Interested Party herein filed case No.01 of 2007 before the Shinyalu Land Disputes Tribunal. His claim before the Tribunal is categorized as a claim to work on land. The ex-parte applicant was the defendant before the tribunal and being dissatisfied with the Tribunal's decision filed the current application seeking orders of Certiorari to remove into this court and quash the decision of the Tribunal as well as the adoption of the award proceedings in Kakamega CMCC No. 90 of 2008.

Mr. Elung'ata, Advocate for the Applicant relied on the Application and submitted that the Tribunal acted in excess of its jurisdiction by canceling the Applicant's title deed and created two titles.

Mr. Kipkosgei, counsel for the respondent submitted that the application is defective in that it is instituted in the name of the applicant and not Republic and that there was no need for a supporting affidavit. Counsel further submitted that he concurs with the applicant's contention that the tribunal exceeded its jurisdiction.

Mr. Musiega, Counsel for the Interested Party relied on the affidavit of the Interested Party and added that the transfer of the property from the original owner to the applicant is questionable. The original owner died in 1989 while applicant was registered in 1981. No evidence of Succession proceedings was tendered. The proceedings before the Chief Magistrate were also not annexed.

The Jurisdiction of Land Disputes Tribunal is specifically stated at Section 3 of the Land Disputes Act No.18 of 1990. Such Jurisdiction does not include the cancellation of title deeds. Even the subordinate courts have no jurisdiction to cancel title deeds. It is clear from the outset that the Tribunal acted in excess of its jurisdiction. The decision of the tribunal was as follows:-

- (a) We order the Kakamega District Land Registrar to cause the Sub-division of parcel of land No. KAKAMEGA/SHISWA/586 in the proprietorship of JOSEPH MUKEYA KHATONJI into two equitable parcels

of land in favour of the objector herein JOSEPH MUKEYA KHATONJI and the claimant herein EDWARD SHISIALI SHASEBULA.

(b) The Tribunal orders removal of any restrictions in this regard on the parcel of land.

With regard to the nature of form of the application, I do find that the format is in order. The wording used is that it is brought by the Republic through the applicant. I do not find any need to strike out the application because of its form.

The Interested Party contend that the transfer of the property to the applicant was done irregularly. This could be correct but the Tribunal was not the proper forum. Indeed I do appreciate the claim by the Interested Party but the tribunal ought to have simply granted him the right to work on the land but not cancel a registered title.

Although the proceedings before the Kakamega Chief Magistrate court were not annexed, the same will be rendered ineffective once the Tribunal's decision is quashed. Thus the non-attachment of those proceedings does not render the application defective.

In the end, I do find that the Shinyalu Land Disputes Tribunal acted in excess of its Jurisdiction. The application dated 14th October, 2008 is hereby granted as prayed but each party shall meet his own costs. It is so ordered.

SAID J. CHITEMBWE

J U D G E

Delivered, Dated and signed at Kakamega, this 16th day of March, 2010.

ISAAC LENAOLA

J U D G E