



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**MISCELLANEOUS APPLICATION NO. 11 OF 2008**

**IN THE MATTER OF APPLICATION BY NAHASHON OLUMA OKOMBO FOR LEAVE TO  
APPLY**

**FOR JUDICIAL REVIEW (CERTIORARI AND PROHIBITION)**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

**AND**

**IN THE MATTER OF MIGORI DISTRICT LAND DISPUTES TRIBUNAL**

**AND**

**IN THE MATTER OF RESIDENT MAGISTRATE'S COURT AT RONGO AND**

**BETWEEN**

**NAHASHON OLUMA OKOMBO..... APPLICANT**

**VERSUS**

**MIGORI LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT**  
**THE RESIDENT MAGISTRATE'S COURT AT RONGO.....2<sup>ND</sup> RESPONDENT**  
**AND**  
**OTIENO OJWANG.....INTERESTED PARTY/RESPONDENT**

## RULING

The ex-parte applicant's application dated 30<sup>th</sup> April 2008 sought an order of certiorari to remove into this court and quash the proceedings and the decision of Migori Land Disputes Tribunal dated 17<sup>th</sup> March 2008 and which was subsequently forwarded to the 2<sup>nd</sup> respondent for adoption. The ex-parte applicant also sought an order for prohibition to prohibit the 2<sup>nd</sup> respondent or any other court from hearing and or adopting the aforesaid decision of the 1<sup>st</sup> respondent with regard to a parcel of land known as **North Sakwa/Kanyamgony/1134, hereinafter referred to as "the suit land."** The suit land is registered in the name of the ex-parte applicant.

In the affidavit sworn by the ex-parte applicant in support of his application he annexed a copy of the title deed of the suit property. The same shows that the suit land was registered in his name on 22<sup>nd</sup> December, 1994.

The interested party filed a claim before the 1<sup>st</sup> respondent claiming a portion of the suit land. The 1<sup>st</sup> respondent heard the claim and in its decision ordered that only two acres of the suit land be retained by the ex-parte applicant and the rest of the suit land be registered in the name of the interested party. The ex-parte applicant stated that the 1<sup>st</sup> respondent in making the aforesaid decision exceeded its jurisdiction by interfering with his rights of proprietorship of the suit property.

The interested party filed grounds of opposition and stated, *inter alia*, that no leave was obtained prior to the filing of the application. He further stated that the statement of facts and the affidavit thereto are at variance with the application for leave.

Mr. Nyambati for the interested party pointed out that in the application for leave the ex-parte applicant referred to the land in dispute as **North Sakwa/Kanyamkango/1134** but the order that was extracted pursuant to the grant of the leave read **North Sakwa/Kanyamgony/1134**. In his view, since leave to institute these judicial review proceedings was sought in respect of a different parcel of land, that is, **North Sakwa/Kanyamkango/1134**, the application by way of notice of motion seeking orders of certiorari and prohibition in respect of **North Sakwa/Kanyamgony/1134** was bad in law and ought to be struck out. Counsel did not make any submissions with regard to the issue of jurisdiction of the 1<sup>st</sup> respondent.

I will start with the issue raised by Mr. Nyambati. It is true that in the application for leave, the ex-parte applicant's advocate referred to the suit property as **North Sakwa/Kanyamkango/1123**. The ex-parte applicant's affidavit sworn in support of the application for leave also refers to the same parcel of land. However, a copy of the title deed and the certificate of official search that were annexed to the application referred to the parcel of land in dispute as **North Sakwa/Kanyamgony/1134**. Both documents show that the ex-parte applicant is the registered proprietor of the same. Furthermore, the award made by the 1<sup>st</sup> respondent also cites the land in dispute as **North Sakwa/Kanyamgony/1134**. It is therefore my view that there was fewer typographical error in referring to the land in dispute as **North Sakwa/Kanyamkango/1134** instead of **North Sakwa/Kanyamgony/1134**. This error cannot disentitle the ex-parte applicant from seeking any appropriate remedy if his application is otherwise competent and merited. In any event, **section 159 (d) of the Constitution of Kenya** states that justice shall be administered without undue regard to procedural technicalities. The property that is in dispute is clear to all the parties as well as the court. I therefore overrule the technical objection raised by the interested party.

Turning to the merits of the application, it is not in dispute that the ex-parte applicant is the registered proprietor of the suit land.

**Section 3 (1) of the Lands Disputes Tribunal Act** clearly defines the jurisdiction of such a tribunal. The jurisdiction is limited to 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.**

A Land Disputes Tribunal does not have power to nullify a title deed duly issued under the provisions of the **Registered Land Act** or under any other legal regime. In **KARANJA -VS- ATTORNEY GENERAL**, Civil Appeal No. 310 of 1997 at Nyeri, it was held that:

**“Any order made without jurisdiction is a nullity and no amount of legal ingenuity can turn that into a valid order.”**

It is clear to me that the 1<sup>st</sup> respondent exceeded its jurisdiction in making its award which is a nullity and of no legal consequence. The award cannot therefore be adopted as a judgment by the 2<sup>nd</sup> respondent or any other court. Consequently, I grant the orders as sought by the ex-parte applicant. The interested party and the 1<sup>st</sup> respondent shall jointly and severally bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT KISII THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2010.**

**D. MUSINGA  
JUDGE.**

**28/9/2010**

Before D. Musinga, J.

Mobisa – cc

Mr. Odhiambo for Mr. Kwanga Mboya for the Applicant

Mr. Nyambati for the Interested Party

**Court:** Ruling delivered in open court on 28<sup>th</sup> September 2010.

**D. MUSINGA  
JUDGE.**