



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDER (CERTIORARI) BY ELPHAS
NYAMBAKA COSMA
AND**

**IN THE MATTER OF DECISION BY THE TONGAREN DIVISION LAND DISPUTES TRIBUNAL IN LAND
DISPUTES TRIBUNAL
AND**

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

AND

**IN THE MATTER OF THE AWARD BY TONGAREN DIVISION LAND DISPUTES TRIBUNAL SENIOR
RESIDENT**

MAGISTRATE'S COURT AT KIMILILI IN LAND DISPUTE NO.11 OF 2007

BETWEEN

ELPHAS NYAMBAKA COSMA APPLICANT

AND

TOBIAS MULATI, JANEPHER SIMIYU, MOSESE MWANJA, EMANUEL KIKECHI & DINAH KHAYOTA AS

TONGAREN DIVISION

LAND DISPUTES TRIBUNAL 1ST RESPONDENT

SENIOR RESIDENT MAGISTRATE,

KIMILILI LAW COURTS 2ND RESPONDENT

AND

CHARLES ANGUCHO SUCHIA INTERESTED PARTY

RULING

The Applicant in these judicial review proceedings brought under Order LIII Rule 3 and sections 8 and 9 of the Law Reform Act seeks for an order to remove into this court and quash the award of Tongaren Division Land Disputes Tribunal which was adopted as judgment by Kimilili Senior Resident Magistrate in LDT No.11 of 2007 on 10/07/2007.

The main ground supporting the application are that the tribunal exceeded its jurisdiction in granting title rights in way of adverse possession. The other grounds contained therein are not relevant in these proceedings and I will not dwell on them. In judicial review proceedings, the court is only concerned with the legality of the decision of the body or authority concerned. Issues of evidence and procedure followed in arriving at the decision become irrelevant.

The Applicant Elphas Nyambaka Cosma depones in the replying affidavit that he is the registered owner of land reference number Bungoma/Naitiri/506 and has annexed a copy of title deed issued to him in 1993.

The Interested Party in his replying affidavit avers that the tribunal acted within its jurisdiction because the claim he lodged was that of occupying and working on land.

I have perused the proceedings of the tribunal. The claimant Charles Angucho Suchia was claiming land that he had purchased in 1991 from one Mzee Nyambaka. He told the tribunal that he had not obtained the relevant Land Control Board Consent. The tribunal allowed the Interested Party's claim by ordering that the land reference no. Bungoma/Naitiri/506 be transferred to his sister Doris Anido on payment of Ksh.7,000/= for facilitation of the transfer.

The jurisdiction of the Land disputes Tribunal is provided for under section 3 (1) of the Land Disputes Tribunal Act. The tribunal has jurisdiction to hear the following matters:

“ 3. (1) 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.”

The land in issue here is registered under the Registered Land Act, Cap.300. Any person claiming ownership of land registered under the Act shall file his claim either in the High Court or the Resident Magistrate's Court depending on the value of the subject matter. The jurisdiction is spelt out in section 159 of the Act. The claim before the Tongaren Land Disputes Tribunal was for transfer of land registered under the Act. The tribunal lacked jurisdiction to determine the claim. The replying affidavit's averment that the claim was to occupy and work on land is not supported by the proceedings and the award of the tribunal.

The Applicant has established that the tribunal acted in excess of its jurisdiction in this matter. The award which was adopted as judgment by Kimilili court is null and void. I hereby allow the application as prayed. The Interested Party to meet the costs of these proceedings.

**F. N. MUCHEMI
JUDGE**

Ruling dated and delivered on the 13th day of October, 2010 in the presence of Mr. Situma for Njoroge for the Applicant.

**F. N. MUCHEMI
JUDGE**