



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII
Miscellaneous Application 3 of 2006

REPUBLIC.....APPLICANT

-VERSUS-

MARANI LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT AT KISII.....2ND RESPONDENT

RICHARD MAKORI NYAKUNDI.....3RD RESPONDENT

AND

FRANCIS OMWENGA OBONYO.....EXPARTE

RULING

The *ex parte* applicant is the registered proprietor of land parcel no. West Kitutu/Bokingoina/1559 which measures about 1.2. Hectares. The 3rd respondent lodged a claim against him in regard to the land with the 1st respondent. This was *Land Disputes Case no. 9 of 2004 at Marani*. The Tribunal heard the claim

between the parties and decided that the *ex parte* applicant transfers all that land to the 3rd respondent. The award was filed at the Chief magistrate's Court at Kisii (2nd respondent) for adoption and it was at that point that the *ex parte* applicant sought, and obtained, leave to bring this judicial review motion for an order of Certiorari to remove into this court and quash the proceedings and decision of the 1st and 2nd respondents. The application was on the ground that the Tribunal had exceeded its jurisdiction provided by *section 3(1) of the Land Disputes Tribunal Act (no. 18 of 1990)* when it heard and determined the dispute the way it did.

The chairman of the Tribunal swore a replying affidavit in which he claimed they had jurisdiction to hear and determine the dispute which, according to him, was a customary law claim.

This was registered land and the provision of *sections 27 and 28 of the Registered Land Act (Cap 300)* gave the *ex parte* applicant absolute and indefeasible title. Customary law was extinguished by the registration, unless the 3rd respondent's claim was noted as an overriding interest or he had a claim of a beneficiary under a trust.

The proceedings before the Tribunal revealed the *ex parte* applicant had obtained title to the land following succession proceedings in Cause no. 294 of 2002 in the High Court at Kisii. The grant was confirmed to him as absolute owner of the land. If the 3rd respondent was aggrieved by the grant he ought to have sought its revocation or annulment under *section 76 of the Law of Succession Act (Cap. 160)*, but not go to complain to the Tribunal.

Section 3(1) of the Land Disputes Tribunal Act did not allow the Tribunal to entertain the 3rd respondent's claim of ownership against the *ex parte* applicant's registered right. (See *Beatrice M'Marete. V. the Republic and others, Civil Appeal no. 259 of 2000 at Nyeri*). It follows that the proceedings and award were a nullity. The same for the proceedings now before the 2nd respondent.

The application is allowed with costs.

Dated, signed and delivered at Kisii this 1st Day of February, 2009.

A.O.MUCHELULE

JUDGE

1/2/2010

Before A.O.Muchelle-J

Court clerk-Bibu

Mr. Ombachi for *ex parte* applicant

Court –Ruling in open court

A.O.MUCHELULE

JUDGE

1/2/2010