



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

OF KISII

Miscellaneous Civil Application 13 of 2008

IN THE MATTER OF AN APPLICATION FOR COMMITTAL FOR CONTEMPT OF COURT

AND

**IN THE MATTER OF DISOBEDIENCE TO COURT ORDER DATED 26TH JUNE, 2007 IN
NAIROBI MISC. APPL.679 (JUDICIAL PROCEEDINGS)**

AND

**IN THE MATTER OF BY LUCAS J. AYUKO AGAINST ZADOCK OYUGI NJUE FOR AN
ORDER OF COMMITTAL**

AND

IN THE MATTER OF LUCAS J. AYUKO APPLICANT

VERSUS

URIRI LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

PRINCIPAL MAGISTRATE'S COURT (MIGORI) 2ND RESPONDENT

ZADOCK OYUGI NJUE INTERESTED PARTY/3RD RESPONDENT

RULING

By a Notice of Motion dated 16th July, 2007 and brought under **Order 53 rule 3(1)** of the **Civil Procedure Rules** and **sections 8 and 9** of the **Law Reform Act Cap. 26 of the Laws of Kenya** the applicant sought an order of certiorari to remove into this Court and quash the decision of the 1st Respondent which was made in respect of land parcel KANYAMKAGO/KAWERE II/1198. The Applicant also sought an order prohibiting the 2nd Respondent from hearing, determining, adopting and enforcing the decision of the 1st Defendant regarding the land. The application was pursuant to leave which was granted ex parte on 26th June, 2007 and which was to operate as stay. The application was made upon the grounds and matters set out in the Statutory Statement and the Replying Affidavit of the Applicant. The Respondents and the Interested Party were all served but did not respond.

The complaint by the Applicant was that he was a joint registered proprietor of the land parcel, the other

owners being **Loise Atieno Ayuko and Erastus Joseph Onyango Ayuko**. On or about 23rd February 2006 the Interested Party lodged a claim for one acre before Migori Land Dispute Tribunal (Uriri Division) (1st Respondent). The acre was within the share of the Applicant. The 1st Respondent heard the claim after which it was decided that the land to be resurveyed by the District Land Registrar to enable the Interested Party get the one acre. It is this decision that was forwarded to the 2nd Respondent which it adopted as judgment and continued to issue a decree. It was argued by the Applicant that the 1st Respondent lacked jurisdiction to entertain the claim by the Interested Party. Reference was made to **section 3(1) of the Land Disputes Tribunal Act 18 of 1990** under which the Tribunal purported to act. The Court is of the view that under the section the Tribunal had no jurisdiction to entertain the Interested Party's claim of ownership against the Applicant's registered right under the **Registered Land Act Cap 300 Laws of Kenya. (Beatrice M'Marete The Republic and Others, Civil Appeal No.259 of 2000 of Nyeri)**. It follows that the adoption of the award by the 2nd Respondent and the subsequent judgment and decree were also in excess of jurisdiction. It is for these reasons that the court allows the application and orders certiorari and prohibition as prayed.

Dated, signed and delivered at KISII this 15th day of June, 2009

A. O. MUCHELULE

JUDGE

15/6/2009

Before A. O. Muchelule Judge

Mongare c/c.

Court:- Ruling in open court.

A. O. MUCHELULE

JUDGE