



REPUBLIC APPLICANT

VERSUS

THE CHAIRMAN SIAYA DISTRICT L. TRIBUNAL1ST RESPONDENT

THE PRINCIPAL MAGISTRATE SIAYA..... 2ND RESPONDENT

EXPARTE AUGUSTINE OGOLA ODENY

AND

ODENY OGOLA ODENY INTERESTED PARTIES

RULING

Vide a Chamber Summons dated 29th April 2009 the applicant **Augustine Ogola Odeny**, obtained leave to apply for an order of certiorari against the decision of the Siaya District Land Tribunal made on the 26th February 2009 and an order of prohibition against the Siaya District Land Registrar and Land Surveyor.

The leave operated as a stay of further proceedings arising from the said decision of the land tribunal and the subsequent award made by the Principal Magistrate's Court at Siaya.

The substantive application was made vide a notice of motion dated 19th May 2009 and filed in court on 21st May 2009.

The application is based on the main ground that the decision of the said tribunal is "**ultra – vires**" and constitutes an error apparent on the face of the record.

The ground is fortified by the statement of facts contained in the preceding chamber summons dated 29th April 2009 as well as the applicant's verifying affidavit of the same date.

The respondents did not file any reply nor appear for the hearing of the application.

The interested party, **Odeny Ogola Odeny**, opposed the application on the basis of the facts contained in his replying affidavit dated 17th July 2009.

At the hearing, **Mr. Odunga**, learned Counsel, represented the applicant while learned Counsel **Mr. Ogonda**, represented the interested party. Having heard both counsels and considered the ground and facts in support of the application as well as those in opposition, it is apparent that the contentious issues are whether the applicant has the necessary locus – standi to bring this application and whether the Siaya Land Tribunal had the necessary jurisdiction to deal and decide on the matter pertaining to land Parcels Nos. **NORTH UGENYA / SIMUR/1284, 1290 and 1292**.

On “**Locus standi**”, this is both an issue of fact and law as implied by the Court of Appeal in the case of **Selesia M’ Aribu =vs= Meru County Council, Civil Appeal No. 183 of 2002 at Nyeri.**

A meddlesome interloper should not be allowed to invoke the jurisdiction of a tribunal in a matter that did not concern him. Mr. Ogonda, submitted that the applicant lacks “**locus – standi**” because he is a son of the registered proprietor of the parcels of land but did not produce the grant of the letters of administration respecting his late father’s estate neither did he produce any power of attorney if his father was then alive. **Mr. Odunga, submitted that the applicant has the necessary “locus standi” in that he was joined in the proceedings before the tribunal by the interested party who is now estopped from alleging lack of “locus – standi”.**

A perusal of the tribunal’s proceedings annexed to the verifying affidavit (i.e. exhibit marked “A004”) shows that it was the interested party who lodged the claim against the applicant. Though not the registered proprietor of the material parcels of land, the applicant was pulled into the dispute by the interested party and by virtue of being the son of his late father. The interested party cannot therefore be heard to now complain that the applicant does not have the necessary “locus standi” in this matter. He cannot now apply double standards simply because he emerged victorious in his case before the tribunal. He is estopped at this juncture to allege lack of “locus standi’ on the part of the applicant who was factually regarded and recognized as the heir of his late father’s property.

On jurisdiction, let it be reiterated that jurisdiction is everything and where a court or tribunal exercises a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given. [See, owners of the Motor vessel “Lilian “S” =vs= Caltex Oil (K) Ltd (1989) KLR 1]

The jurisdiction of a land tribunal is limited to what is specified under Section 3 (1) of the Lands Disputes Tribunal Act No. 18 of 1990 in that:-

“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, involving land held in common,
- (b) a claim to occupy or work land; or
- (c) trespass to land

shall be heard and determined by a tribunal established under Section 4”.

Therefore, any decision of a Land tribunal made in excess of or without necessary jurisdiction would be null and void ab initio.

The applicant contends that the material tribunal had no powers to deal with registered land and that the registration of the material parcel of land having been a first one, the registered proprietor’s interests are indefeasible by virtue of Section 27 and 28 of the Registered lands Act.

The interested party while conceding that the parcels of land were registered during the adjudication process maintains that the tribunal had the powers to deal with the land which was communal.

The interested party alleges that the registration was effected through fraud and beseeched this court to disregard technicalities and apply equity in the present circumstances.

However, in as much as the parcels of land became registered under the Registered Lands Act, they immediately ceased to be communal land and no longer within the jurisdiction of the Siaya Land Tribunal which by its decision of the 26th February 2009 purported to order a cancellation of

the title deeds and a re-survey and sub-division of the material parcels of land.

In the case of JOTHAM AMUNAVI =vs= THE CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL & ANOTHER, CIVIL APPEAL NO. 256 OF 2002 AT KISUMU, the Court of Appeal observed that if the implementation of the decision of the tribunal entails, the sub – division of the suit land into two parcels opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre its clear that the proceedings before the tribunal related to both title to land and to beneficial interest in the suit land and such a dispute is not within the provisions of Section 3 (1) of the land Disputes Tribunal Act as such dispute can only be tried by the High Court or by the Resident Magistrate’s court where such latter court has jurisdiction.

The tribunal herein clearly lacked the necessary jurisdiction to deal with the material parcel of land. The interested party was wrong in moving a tribunal which had no jurisdiction. He cannot now expect equity to come to his aid. Equity follows the law and would not apply herein. Besides, judicial review is not concerned with the merits of the decision but the process of making the decision. A decision made without or in excess of jurisdiction is null and void.

In the case of Sir Ali Bin Salim =vs= Shariff Mohamed Shary (1938) KLR 9, it was stated that:-

“If a court has no jurisdiction over the subject matter of the litigation, its judgments and orders, however precisely certain and technically correct, are mere nullities and not only voidable, they are void and have no effect either as estoppel or otherwise, and may not only be set aside at any time by the court in which they are rendered, but be declared void by every court in which they may be presented. It is well established law that jurisdiction cannot be conferred on a court by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction”.

(See also, Republic =vs= Chairman Land Disputes Tribunal Kirinyaga District & Another ex-parte Kariuki (2005) 2KLR 10, Republic =vs= Kajiado Land Disputes Tribunal and others NBI HCCC No. 689 of 2001).

From all the foregoing, the application is merited and granted to the extent that an order of certiorari hereby issues bringing into this court for quashing and hereby quashing the decision of the Siaya District Land Tribunal made on 26th February 2009 in Siaya Land case No. 26 of 2009 and the award of the Siaya Principal Magistrate’s Court in land case No. 28 of 2009 made on 31st March 2009.

The costs of the application be borne by the interested party.

Ordered accordingly.

Dated, signed and delivered at Kisumu this 23rd day of October 2009.

J. R. KARANJA

JUDGE

JRK/aao