



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**OF KISII**

**Judicial Review 4 of 2007**

**IN THE MASTTER OF AN APPLICATION FOR JUDICIAL REVIEW BY WAY OF  
CERTIORARI, PROHIBITION AND MANDAMUS**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT, CHAPTER 300 LAWS OF KENYA**

**AND**

**THE LAND DISPUTES TRIBUNAL ACT 18 OF 1990**

**AND**

**IN THE MATTER OF LAND TITLE NO.SOUTH SAKWA/WAWARE/1081**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE CHAIRMAN, AWENDO DIVISION LAND DISPUTES TRIBUNAL..1<sup>ST</sup> RESPONDENT**

**RESIDENT MAGISTRATE, RONGO ..... 2<sup>ND</sup> RESPONDENT**

**CHARLES NYAGAYA OBONYO .....3<sup>RD</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR, MIGORI .....4<sup>TH</sup> RESPONDENT**

**THE DISTRICT LAND SURVEYOR, MIGORI .....5<sup>TH</sup> RESPONDENT**

**RULING**

The ex parte applicant filed a notice of motion brought under the provisions of Order LIII rule 3 of the Civil Procedure Rules and sought, inter alia;

**(a) An order of certiorari to remove into this court and quash the order and/or decision of the Awendo Land Disputes Tribunal dated 23<sup>rd</sup> April, 2007 and decree dated 4<sup>th</sup> June, 2007 issued by the Resident Magistrate's Court, Rongo in Misc. Application No.23 of 2007 adopting the said tribunal's decision as a judgment and decree.**

**(b) An order of prohibition directed to the District Land Surveyor, Migori or any other officer acting under him from carrying out any surveys and/or sub-dividing the applicant's land title No.SOUTH SAKWA/WAWARE/1081 with a view to carrying out 4 acres of land and registering the same in the 3<sup>rd</sup> Respondent's name or his agents pursuant to the decisions of the 1<sup>st</sup> respondent given on 23/4/2007 and the 2<sup>nd</sup> Respondent given on 4/6/2007.**

**(c) An order of prohibition directed to the District Land Registrar, Migori, the 4<sup>th</sup> respondent, prohibiting him from interfering in any manner with the ex parte applicant's title to parcel No. SOUTH SAKWA/WAWARE/1081 in execution of the decision of the 1<sup>st</sup> respondent and the 2<sup>nd</sup> respondent or otherwise interfering with the applicant's use and enjoyment of that parcel of land and enjoyment of her rights thereon.**

**(d) An order of probation to restrain the Awendo Land Disputes Tribunal from entertaining, maintaining or otherwise hearing and/or determining the same issues arising in respect of the suit parcel of land.**

**(e) In the alternative, in the event that the 4<sup>th</sup> respondent has already executed the order of the 2<sup>nd</sup> respondent together with the 1<sup>st</sup> respondents decision, then an order of mandamus do issue directed to the District Land Registrar, Migori, compelling him to register a prohibition restraining any disposition or any other transaction in relation to the said parcel of land and to compel him to cancel the said registration in favour of the 3<sup>rd</sup> respondent and in its reinstate the registration in favour of the ex parte applicant.**

**(f) The costs of this application.**

All the respondents were served with the said application but none of them entered appearance or filed any replying affidavit. The application was therefore unopposed.

In the affidavit in support of the application, the applicant deposed that she was the registered proprietor of a parcel of land known as **SOUTH SAKWA/WAWARE/1081** (hereinafter referred to as "**the suit land**") and annexed to her affidavit copies of the Title Deed and a Certificate of Official Search. The said title deed was issued to the applicant on 1<sup>st</sup> September, 2006. The suit land was a sub-division of **SOUTH SAKWA/WAWERE/45**, which was, registered in the name of Owino Ojwang, the applicant's father in law. The applicant lived on the suit land together with her husband, the later Philemon Oluoch Owigo until 1982 when he died. The applicant alleged that during his lifetime, her late husband gave to the 3<sup>rd</sup> respondent on acre of land out **SOUTH SAKWA/WAWERE/45**.

Sometimes in March, 2007, the 3<sup>rd</sup> respondent filed a land a dispute with the first respondent claiming to have purchased from the applicant's deceased husband a parcel of land measuring about 4 acres (1.6 Hectares), being portion of **SOUTH SAKWA/WAWARE/45**. The tribunal heard the dispute. The applicant stated that the chairman informed her that she would be informed whenever the judgment would be ready. The applicant learnt in October, 2007 that the tribunal had on 23<sup>rd</sup> April, 2007 decided the land dispute in favour of the 3<sup>rd</sup> respondent. She have never been notified of the date of its delivery. However on 26<sup>th</sup> October, 2007 when she went to the tribunal's offices, she was asked to thumb print the award in a manner that suggested she was present during its delivery on 23<sup>rd</sup> April, 2007. The award was filed in the Resident Magistrate's Court at Rongo vide Misc. Application No.23 of 2007 and a decree thereof was issued on 4<sup>th</sup> June, 2007. It is not clear whether both parties had been notified to attend court for the reading and adoption of the same.

In the decree, the third respondent was awarded 4 acres of land out of the suit land. It was further ordered that in the event that the applicant refused to sign the transfer documents, the court officer should execute the same.

On 23<sup>rd</sup> November, 2007, the applicant received a letter from the District Land Registrar, Migori, informing her that he would visit the suit land on 18<sup>th</sup> December, 2007 with a view to effecting the aforesaid decree. However, on 13<sup>th</sup> December, 2007 the applicant commenced these judicial review proceedings and on 17<sup>th</sup> December, 2007 Gacheche J. granted leave to institute these proceedings. The leave was also to operate as a stay of enforcement of the decision the tribunal together with the court decree.

Miss Sewe for the applicant submitted that the tribunal acted outside its jurisdiction in terms of the provisions of **Section 3(1) and (7)** of the Land Disputes Tribunal Act, hereinafter referred to as “**the Act**”. She further submitted that the third respondent’s claim was time barred, the alleged purchase of the land having taken place in 1977. The tribunal therefore breached **section 13(3)** of ultra vires by purporting to give effect to a purported unwritten agreement of sale of land which the purported seller, the applicant’s deceased husband, had no capacity to sell as the land then known as SOUTH SAKWA/WAWARE/45 was registered in the name of Owino Ojwang, the applicant’s father in law. No land control. Board consent was obtained in respect of the alleged transaction.

The jurisdiction of the land Disputes Tribunal as set out under **Section 3** of the Act is:

**“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.**

**shall be heard and determined by a Tribunal established under section 4.”**

Jurisdiction of a court or a tribunal is a creature of Statute and a court or tribunal is not permitted to act outside its jurisdiction; even by consent or acquiescence of the parties who appear before it. Where a claim regarding ownership of registered land is filed before a land Disputes Tribunal and both parties participate in the proceedings, even without raising any issue about jurisdiction of the tribunal, that does not in any way validate the decision of the tribunal. Such decision is a nullity in law and ought to be quashed by an order of certiorari.

In this case, the tribunal clearly acted outside its jurisdiction. In purporting to award four acres to the 3<sup>rd</sup> respondent out of the suit land. It was interfering with the rights of a registered proprietor which are stipulated under **Sections 27 and 28** of the **Registered Land Act**.

I also agree with Miss Sewe that the 3<sup>rd</sup> respondent’s claim was time barred. Section 13(3) of the Act expressly prohibits a Land Disputes Tribunal from hearing disputes which are time barred.

The tribunal in delivering the award without notifying the applicant and the Resident Magistrate’s Court, Rongo, in proceeding to read and adopt the award in the absence of the applicant and without notice to her, if indeed that was the case, breached rules of natural justice.

I allow the applicant’s application in the terms as stated therein. The first and the third respondent shall bear the costs of the application.

**DATED, SIGNED and DELIVERED at KISII this 15<sup>th</sup> day of October, 2008.**

**D. MUSINGA**

**JUDGE**

Delivered in open court in the presence of:

N/A for the applicants.

N/A for the respondents

**D. MUSINGA**

**JUDGE**