

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA
Misc Appli 87 of 2005

KEZIA MBONE

KITAZIAPPLICANT

V E R S U S

SABATIA LAND DISPUTES

TRIBUNALRESPONDENT

A N D

**FRANCIS SAUL JUMBA MUYEYIAINTERESTED
PARTY**

R U L I N G

Francis Saul Jumba Muyeyia, the interested party herein, was the claimant in case No.9 of 2005 filed Vihiga District Land Disputes Tribunal. His claim was against Kezia Mbone Kitazi, the exparte applicant herein. The claim was for recovery of land Plot No. Losengeli/North Maragoli/1123 (“the said land”) which the Applicant claimed he had bought from the exparte applicant and her sister, one Sarah Vihenda. The Land Disputes Tribunal in its decision dated 9-8-05 gave the ex-parte applicant 30 days to vacate the said land and ordered the Interested Party to pay to the exparte applicant the balance of Shs.60,000/= within 21 days. The decision was however not read to the parties until 30.11.2005 when the Senior Resident Magistrate’s Court at Vihiga in Misc. Application Number 78 of 2005 read it. It is this decision that the exparte applicant sought to have quashed by an order of certiorari sought in his Notice of Motion dated 03-01-2006 on the ground that the said Land Disputes Tribunal had acted ultra vires its powers as it had no jurisdiction to hear or determine the dispute under section 3 of Act 18 of 1990. The ex-parte applicant also sought an order of prohibition to prohibit the Senior Resident Magistrate at Vihiga from adopting the said decision/award as a judgment of the court.

The said land No. North Maragoli/Lusengeli/1123 was registered in the name of Belita Mwenesi Kiverenge as the proprietor. The exparte applicant averred in the supporting affidavit that Belita Mwenesi Kiverenge is deceased and was not alive even at the time when the Vihiga District Land Disputes Tribunal heard and determined the dispute. The exparte applicant submitted that he has not sought or obtained a Grant of Letters of Administration Intestate in the estate of the late Belita Mwenesi Kiverenge and therefore had no capacity to be sued.

The Interested Party who had been served with the application on 30.3.06 but did not file any replying affidavit attended court when the application came up for hearing in this court on 16.5.06. The Respondent who had also been served did not attend court. The application proceeded to hearing. Mr. Athung’a, learned counsel for the exparte applicant, urged the court to grant the orders of certiorari and prohibition.

I have perused the application and considered the averments made in it as well as the submissions made by Mr. Athung’a. The power of the Land Disputes Tribunal is set out in section 3 (1) of the Land Disputes Tribunal Act No.18 of 1990. They clearly do not extend to determination of issues of title to land or contractual rights of parties. The power to determine disputes on such issues is vested in the courts of law. The Tribunal acted beyond its powers and its decision was without jurisdiction. It was null and void. The land it purported to order the exparte applicant to vacate was registered at the time in the name of a deceased person whose estate was not represented in the proceedings. The order by the tribunal requiring the Interested Party to pay the exparte applicant Shs.60,000/= which appears to be the

balance of purchase price was an attempt by the Tribunal to enforce a contract. The power to do this is the preserve of the courts of law. The Tribunal had no jurisdiction to do so. Its decision was also a nullity.

It is my finding that the decision of the Tribunal was ultra vires its powers. It is hereby quashed by an order of certiorari issued as prayed in the application. An order of prohibition shall also issue to prohibit the Resident Magistrate's Court at Vihiga from adopting the decision as a judgment of the court.

Each party shall bear its own costs.

Dated at Kakamega this 29th day of June, 2006

G. B. M. KARIUKI

J U D G E

29/6/06