REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

Civil Misc Appli 88 of 2005

IN THE MATTER OF AN APPLICATION BY JAMES ALUKOYE WERE

AND

IN THE MATTER OF THE DECISION OF THE LURAMBI DIVISION LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF KAKAMEGA CHIEF MAGISTRATE'S COURT MISC. CIVIL AWARD NO.165 OF 2005

BETWEEN

JAMES ALUKOYE WERE .....APPLICANT

AND

LURAMBI DIVISIONAL LAND DISPUTES TRIBUNAL .....RESPONDENT

AND

BENEDICT MAINA ANDEYI .....INTERESTED PARTY

R U L I N G

The application by Notice of Motion dated 16/12/05 was taken out by the exparte applicant, *James Olukoye Were.* It shows that the Interest Party, *Benedict Maina Andeyi* referred a dispute over land title No. Butsotso/Esumeyia/677 to Lurambi Division Lands Disputes Tribunal in the year 2005 and cited the exparte applicant as the Respondent. The Tribunal in its decision held that the land comprised in the title No.Butsotso/Esumeyia/677 should be "given" to the Interested Party pursuant to an agreement made between the exparte applicant and the Interested Party. In effect, the said Tribunal was decreeing specific performance of the alleged contract. The decision of the tribunal was filed in the Chief Magistrate Court at Kakamega in CMC Award No.165 of 2005 for adoption as a judgment of the court in accordance with the provisions of the Lands Disputes Tribunals Act No.18 of 1990, but prior to its adoption, the exparte applicant moved this court for an order of certiorari to issue to bring into this court to be quashed the

decision of the said Tribunal. In his affidavit verifying the contents of the statement, the exparte applicant averred that he is and was at all material time the registered proprietor of the suit land, to wit, Butsotso/Esumeyia/677. He annexed a copy of certificate of official search to prove this fact. He further averred that the Tribunal had no jurisdiction to entertain or decide the dispute. It was the exparte applicants contention that the Tribunal was not properly constituted as required by Act 18 of 1990 and that its members did not sign the award as required by the said Act.

The Interested Party who was served with the Notice of Motion as evidenced by the affidavit of service sworn on 28-1-2006 by one Zablon Ochieng Senge, a court process server, did not file a replying affidavit nor did he attend court on 30-5-06 although the Notice of Motion specified the date it was coming up for hearing.

Mr. Ombaye, learned counsel for the ex-parte applicant, urged me to grant the order sought because his client had made out a case for its grant and pointed out that no defence had been offered.

I have perused the Notice of Motion dated 16/12/2005 and considered the submissions made by Mr. Ombaye. The suit land is and appears to have been registered in the name of the exparte applicant as its proprietor. The powers vested in the Divisional Lands Disputes Tribunal such as the Lurambi Division Lands Disputes Tribunal under section 3(1) of Act 18 of 1990 do not include the power to decide rights of parties under a contract for sale of land (or any other contract) nor do they include the jurisdiction to grant specific performance of such contract or to decide issues affecting title to land. The Lurambi Lands Disputes Tribunal in attempting to deal with the title to the said land and to determine the rights of the parties and also to decree specific performance went far beyond its powers and acted ultra vires such powers. Its decision was clearly a nullity.

I am satisfied that the exparte applicant has made out a case for the issuance of the order of certiorari as prayed. Accordingly, I order issue of certiorari to bring into this court to be quashed the undated decision of the Lurambi Lands Disputes Tribunal affecting land title No. Butsotso/Esumeyia/677 filed in Kakamega C.M. Court in Misc. Civil Award No.165 of 2005. I also order issue of an order of prohibition to prohibit the C.M. Court at Kakamega from adopting as a decision of the court the said award. I further order that the Interested Party shall bear the costs of the exparte application in these proceedings. It is so ordered.

Dated, signed and delivered at Kakamega this 13th day of July, 2006.

G. B. M. KARIUKI

J U D G E