



- *The High Court may quasha decision made without jurisdiction*
- *When costs may not be awarded*

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

Misc Civil Appli 97 of 2002

IN THE MATTER OA AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF AN APPLICATION BY SHEM BALONGO AND AGULA

MBOLU FOR ORDERS OF CERTORARI

BETWEEN

REPUBLIC APPLICANT

VERSUS

1. CHIEF OF AGENG'A LOCATION)

**2. ASSISTANT CHIEF OF SIGALAME SUBLOCATION
RESPONDENT**

AND

1. JOHN MAMBALA MARI

2. GEORGE NGANO OGOLA .. INTERESTED PARTY

R U L I N G

Under order LIII rule 3 of the Civil Procedure Rules, Shem Balongo alias Shem Sanya Balongo and Agula Mbolu filed a motion seeking for orders of Judicial Review in the nature of certiorari to remove into this Court for quashing the proceedings and the decision of the Chief of

Agenga Location dated 13.4.2002 which altered the boundary between L.R. No.SAMIA/BUDONGO/946 and L.R. NO.SAMIA/BUDONGO/947.

The motion was served upon all the parties concerned but none filed a response to counter it. This motion proceeded for hearing ex parte when the Respondents and the interested parties failed to attend Court despite having been served with a hearing notice as per the affidavits of service of Joseph Orata Kweyu both sworn on 28.2.2005.

The main ground argued by Mr. Wanyama for the applicants before this Court is to the effect that the Respondents acted without jurisdiction and contrary to the provisions of section 21 and 22 of the Registered Land Act. Mr. Wanyama argued that the powers to determine boundary disputes are vested to the Land Registrar and not the Respondents. He urged this Court to quash the decision and direct the litigants to appear before the right forum.

The material placed before this Court shows a boundary dispute between the registered owners of L.R.NO. SAMIA/BUDONGO/946 on one hand and those of L.R. NO. SAMIA/BUDONGO/947 was referred to the chief of Ageng'a Location by the assistant chief of Sigalame Sub-Location in Busia district for arbitration. It would appear the chief, Mr. Julius Wafula heard the parties to the dispute with their witnesses on 1st April, 2002. He finally gave his verdict on 13th day of April, 2002 in which he altered the boundary between the aforementioned parcels of land. The ex parte applicants now state that their chief had no jurisdiction at all to entertain the dispute. Copies of the register in respect of the two aforementioned parcels of land were annexed to the verifying affidavit of Shem Sanya Balongo sworn on 22nd July, 2002. A copy of the decision and its English translation were also annexed to the same affidavit. It is apparent that the parcels of land are registered under the registered Land Act Cap 300 Laws of Kenya.

The Provisions of section 21(2) of the registered Land Act gives the Land registrar exclusive powers to hear and determine boundary disputes arising out of land registered under the Act. It is evident from the chief's minutes dated 13th April, 2002 that the chief Ageng'a Location heard and determined a boundary dispute relating to L.R. NO.SAMIA /BUDONGO/946 and L.R. NO.SAMIA/BUDONGO/947. The Law did not vest such jurisdiction on a chief. The chief therefore heard and determined a dispute which he did not have a jurisdiction. In such a case certiorari will issue to quash a decision made without jurisdiction.

The Court of Appeal in the case of KENYA NATIONAL EXAMINATION COUNCIL AND REPUBLIC EX PARTE GEOFFREY GATHENJI NJOROGE AND 9 OTHERS CIVIL APPEAL NO. 266 OF 1996.

Stated as follows:-

“ Only an order of certiorari can quash a decision already made and an order of certiorari will issue if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with or for such like reasons.”

The upshot therefore is that I will allow the motion dated 5th August, 2002 in terms of prayer (a). I direct that each party meets his or her own costs in view of the fact that the parties willingly submitted themselves to the authority of their chief.

DATED AND DELIVERED THIS 8th DAY OF April 2005

J. K. SERGON

JUDGE

