



Republic v Busia Municipality Land Disputes Tribunal; Wandera (Sued as the Leg. Rep. of the Estate of Ali Awala Angaroi) (Interested Party); Jamoco Management Committee & 2 others (Exparte) (Environment and Land Civil Miscellaneous Application 109 of 2011) [2023] KEELC 18617 (KLR) (11 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18617 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUSIA
ENVIRONMENT AND LAND CIVIL MISCELLANEOUS APPLICATION 109 OF 2011**

BN OLAO, J

JULY 11, 2023

BETWEEN

REPUBLIC APPLICANT

AND

BUSIA MUNICIPALITY LAND DISPUTES TRIBUNAL RESPONDENT

AND

GEORGE WANDERA (SUED AS THE LEG. REP. OF THE ESTATE OF ALI AWALA ANGAROI) INTERESTED PARTY

AND

JAMOCO MANAGEMENT COMMITTEE EXPARTE

NELSON KIBE NJOROGE EXPARTE

MOHAMMED ATHMAN OYOLO EXPARTE

RULING

1. It is unfortunate that an application for leave to file Judicial Review proceedings first filed herein on 23rd June 2011 before being amended on 4th August 2022 is being determined twelve (12) years later.
2. By their amended *Ex-parte* Chamber Summons filed herein on 12th September 2022, Jamoco Management Committee, Nelson Kibe Njoroge And Mohammed Athman Oyolo (the 1st, 2nd and 3rd Applicants respectively) sought the following orders:

1: Spent.



- 2A: That leave be granted to the Ex-parte Applicants to apply for orders of Judicial Review in the nature of Certiorari to call into the Environment and Land Court at BUSIA the award of Busia Municipality Land Disputes Tribunal that was adopted as a Judgement of the Court on 2/3/2011 vide BUSIA CMC Land Dispute NO 5 of 2011 and to quash the same and the consequent transfer of land parcel No South Teso/angoromo/957 From Kangethe Wanyoike (deceased) To Ali Awala Ongaroi And The Subsequent Subdivision Of The Land Parcel No South Teso/angoromo/957 Into The New Land Parcels No South Teso/angoromo/13561 and 13562 be cancelled.
- 3A: That an order of inhibition be entered on the register of land parcel No South Teso/angoromo/13561 and 13562 to prevent dealings in them pending the hearing and final determination of Judicial Review proceedings as commenced herein.
4. That the costs of this application be provided for.
3. Annexed to the *Ex-parte* Chamber Summons are the following documents:
1. Amended statement of facts.
 2. Verifying affidavit dated 25th August 2022 and signed by the 3rd Ex-parte Applicant.
 3. Copy of register of the land parcel No South Teso/angoromo/957.
 4. Certificate of registration of Jamoco Management Committee.
 5. Minutes of meeting held on 20th December 2009 at Jamia Mosque Grounds.
 6. Death certificate of one Mohammed Juma.
 7. Authority to plead signed by the 2nd Applicant authorizing the 3rd Applicant to sign documents on his behalf.
 8. Death certificate of one Kangethe Wanyoike.
 9. Grant of Letters of Administration issued to the 2nd Applicant in respect to the Estate of one Kangethe Wanyoike In Busia Cmc P&a Case No 38 of 2017.
 10. Proceedings in Busia Municipality Land Dispute Case No 11 Of 2008 Ali Awala Ongario -v- Muhammed Juma & Kangethe Wanyoike dated 23rd December 2010.
 11. Proceedings in Buisa Cmc Land Case No 5 of 2011.
 12. Certificate of Official Search for the land parcel No South Teso/angoromo/957.
4. Although the *Ex-parte* application was filed on 23rd June 2011, it was not until 8th October 2018 that it was placed before Kaniaru J When The *Ex-parte* Applicants' New Counsel Mr Wanyama sought leave to enjoin some parties vide his application dated 4th July 2018. That application was allowed by a ruling delivered on 12th September 2019.
5. By another application filed under Certificate of Urgency dated 20th December 2019 and filed on 7th January 2020, the Applicants sought the same orders as above. When it was placed before Omollo J on 21st January 2020, the Judge was not amused and commented that the same "cannot be prosecuted piece meal". She declined to certify it as urgent but directed that it be served upon all the other parties and a date be taken in the registry.



6. It came up for hearing on 20th February 2020 by which time Mr Ashioya was on record for the Interested party and Mr Tarus appeared for the Respondents. Both of them informed the Court that they were opposing the application and the Court directed that the application be canvassed by way of written submission. Before that could be done, however, Mr Ashioya was allowed to cease acting for the Interested Party who also passed away. The process of substituting the deceased Interested Party took quite a while and it was not until 28th July 2022 that the Interested Party Ali Awala Ong'ori was substituted with George Wandera.
7. While all that was proceeding, Mr Wanyama counsel for the *Ex-parte* Applicants filed on 16th June 2020 his submissions dated 5th June 2020 in respect to the Chamber Summons dated 20th December 2019.
8. As is now clear, the application pending before me is the amended Chamber Summons application dated 4th August 2022 seeking leave to file judicial review application as well as orders of inhibition. Those are the same prayers sought in the application dated 20th December 2019.
9. I have considered the application, the statement of facts, the verifying affidavit by the 3rd Applicant and the submissions by counsel.
10. It is clear from the pleaded facts and the annexures that the Applicants seek leave to file Judicial Review proceedings to quash by a writ of certiorari the award of the Busia Municipality Land Disputes Tribunal (the Tribunal) dated 20th December 2010 and which was subsequently adopted as a judgment of the Busia CMC Land Case No 5 Of 2011 With Respect To The Land Parcel No South Teso/angoromo/957 on 2nd March 2011 and which was subsequently sub-divided to create the land parcels No South Teso/angoromo/13561 and 13562.
11. It is the Applicants' case that the Tribunal acted without jurisdiction in purporting to transfer registered land whose owner one Kangethe Wanyoike was already deceased and had not yet been succeeded. That following the adoption of the Tribunal's award as a judgment of the Court on 2nd March 2011, the land parcel No South Teso/angoromo/957 was sub-divided to create the land parcels No South Teso/angoromo/13561 and 13562.
12. An order of certiorari is therefore sought to quash the Tribunal's award dated 23rd December 2010 as well as an order of inhibition to prevent any dealings with the land parcels No South Teso/angoromo/13561 and 13562 pending the hearing and determination of the Judicial Review proceedings.
13. Although grounds of opposition to the application for leave had been filed both by Mr Ashioya Advocate then acting for the Tribunal (before he filed an application to cease acting and was allowed to do so), as well as Mr Tarus Senior State Counsel also for the Tribunal, an application for leave to file Judicial Review proceedings is usually *Ex-parte*. However, vide the proviso to Order 53 Rule 1 of the [Civil Procedure Rules](#), the Court can direct that the same be heard *inter-parte*. Such leave is usually granted at the discretion of the Court.
14. Looking at the grounds of opposition filed both by Mr Ashioya And Mr Tarus, it is the Respondent's case that the application is fatally defective, incompetent and an abuse of the process of the Court which should therefore be dismissed. At this stage, however, all that I am required to confirm is that the *Ex-parte* Applicants have set out a case fit for further hearing or whether their case is in fact frivolous, defective or an abuse of the process of this Court as alleged by the Respondents in their grounds of opposition. In other words, is the Applicants' case justifiable? At this stage, I am not required to delve into the strength or otherwise of the parties respective cases.



15. Taking all that into account, I am satisfied that the award of the Tribunal having been made on 23rd December 2010 and this application for leave having been originally filed on 23rd June 2011 before being amended, it was within the 6 months period set out *vide* Section 8(3) of the [Law Reform Act](#) allowed for an application for an order of certiorari.
16. Secondly, the other issue raised that the Tribunal went beyond its jurisdiction to determine a dispute involving registered land and in the absence of the proprietor who was already deceased and had not been substituted is not entirely hollow. As to whether or not the orders sought in the substantive application will be granted is a matter to be determined on the basis of the evidence which will be filed by all the parties. Clearly however, the Applicants have demonstrated a *prima facie* case to warrant the grant of the leave sought to file Judicial Review proceedings seeking an order of *certiorari* to quash the decision of the Tribunal dated 23rd December 2010.
17. The up-shot of all the above is that having considered the Chamber Summons application dated 17th June 2011 as amended on 4th August 2022, this court makes the following orders:
 - 1: Leave is granted as prayed.
 - 2: The Applicants to file and serve the substantive Motion upon the Respondents, the Interested Party and all other persons interested in the land parcels No South Teso/angoromo/13561 and 13562 within 21 days from to-day.
 - 3: An order of inhibition is issued restraining any dealings with the land parcel No South Teso/angoromo/13561 and 13562 pending the hearing and final determination of substantive Judicial Review Motion.
 - 4: Mention on 21st September 2023 for directions.
 - 5: Costs shall be in the Motion.

BOAZ N. OLAO

JUDGE

11TH JULY 2023

RULING DATED, SIGNED AND DELIVERED AT BUSIA ON THIS 11TH DAY OF JULY 2023 BY WAY OF ELECTRONIC MAIL.

BOAZ N. OLAO

JUDGE

11TH JULY 2023

