



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISUMU

JUDICIAL REVIEW CASE NO. 5 OF 2018

IN THE MATTER OF AN APPLICATION BY JOHN ODEK OSURU FOR ORDERS OF JUDICIAL REVIEW CERTIORARI

AND

IN THE MATTER OF THE DECISION AND AWARD OF THE LAND DISPUTE TRIBUNAL SIAYA, LAND CASE NO. 80 OF 2006 CONCERNING LAND PARCEL NUMBER UHOLO/TINGARE/470

AND

IN THE MATTER OF ADOPTION OF PROCEEDINGS OF 7TH APRIL 2009 IN SIAYA PRINCIPAL MAGISTRATE'S COURT AT MISC. APPLICATION OF LAND DISPUTE TRIBUNAL NO. 22 OF 2009

AND

IN THE MATTER OF THE REPUBLIC OF

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN, SIAYA LAND DISPUTE TRIBUNAL.... 1ST RESPONDENT

THE SENIOR RESIDENT MAGISTRATE2ND RESPONDENT

AND

JOEL OGOLA OSURU1ST INTERESTED PARTY

SISILIA ODINGA ODHIAMBO.....2ND INTERESTED PARTY

AND

JOHN ODEK OSURU.....EXPARTE APPLICANT

JUDGEMENT

The land in dispute is N/UHOLO/TINGARE 470 measuring 4.0 Ha. It was originally registered in the names of Osuri Oyuona on 17/2/70. Osuri Oyuona had three sons namely Odhiambo Osuri who was the elder son, Joel Osuri, the second born and John Odek Osuri the third born. In the year 2001, John Odek became the registered owner in unclear circumstances. The other son Joel Ogola Osuru and the sister in-law Sisilia Odiye Odhiambo (wife to Odhiambo Osuro) complained to the Siaya Land Dispute Tribunal in Tribunal case No. 80 of 2006 who sat and deliberated on the dispute and awarded the land in dispute to the three brothers and ordered that the three brothers to share the land equally thus

John Odek Osuru- 1 1/3Ha.

Joel Ogola Osuru – 1 1/3 Ha

Sisilai Odhiambo Osuru- 1 1/3 Ha.

The County Land Surveyor Siaya was to visit the disputed land and do a survey. The decision was made and executed by Walter Ogolla Mufuoni, Ben Ayoro, Eluid Ooko Madera on 26/2/2009. The award was filed in the Principal Magistrate's court at Siaya in Misc. Land Dispute Tribunal no. 22 of 2009 and adopted as the Judgement of the court on 7/4/2009.

In the notice of motion dated 9/12/2019, the Ex-parte Applicant, Joel Odek Osuru seeks an order of Certiorari to bring into this court for purposes of quashing the 2nd respondent's order in respect of Land Parcel Number Uholo/Tingare/470 despite the fact that six (60 months) have elapsed as required by law.

The Applicant argues that the court lacked jurisdiction to determine the dispute and that the decision of the Tribunal was a nullity.

The Respondents field grounds of opposition that:

- 1. The Application is scandalous, vexatious, frivolous and an abuse of the Court process.**
- 2. The Ex-parte Applicant's Application is misleading the Court in stating that the Orders made on the 11.02.2019 dismissing his earlier application filed on 14.12.2018 be set aside.**
- 3. The Ex-parte Applicant has failed to clearly demonstrate to this Honourable Court by way of evidence that there is indeed any reasonable cause to warrant the review and/or setting aside of the court's Orders dismissing the Application dated 14.12.18.**
- 4. That it is in the ex-parte Applicant's full knowledge that these so may Applications are a waste of courts time as the land dispute concerning land parcel no. Uholo/Tingare/470 was amicably settled vide the findings of Siaya Land Dispute tribunal no. 80/2006 and the same adopted as the judgment of the court on 7th April, 2009 in Siaya PM'S Court Misc. Application Land Dispute Tribunal no. 22/2009.**
- 5. The 1st and 2nd Interested Parties are vehemently opposed to this Application.**
- 6. Priority should be to the decision of the SIAYA PM'S COURT adopting the judgment of Siaya Land Dispute Tribunal outcome.**

I have considered the arguments by the Exparte Applicant and the Respondents and do find that the main issue for determination is whether the Tribunal had the jurisdiction to determine the dispute.

Section 3 of the Land Dispute Tribunal Act (repealed) provided thus:

- 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,**

There are no provisions for cancellation of title. The only powers conferred to the tribunal were to determine the boundaries dispute, right to work and occupy land and dispute relating to Trespass.

The dispute was properly before the Tribunal because it could determine the right to work and occupy land as the Interested Parties were working and occupying the land. However, the Tribunal went beyond its jurisdiction to order cancellation of title and distribution of the land and new titles to be issued.

Before I can grant the orders sought, I do find that the parties are still in occupation of the land as they did when the land was registered in the names of the exparte Applicant. Any order I do make ***should not be used to evict the Interested Parties*** as the dispute has not been determined in the legally prescribe procedure.

I do find that the Siaya Land Dispute Tribunal exceeded its jurisdiction and therefore I do grant an order of Certiorari quashing the decision of Siaya Land Dispute Tribunal no. 80 of 2009 made on 22/2/2009 and the order of the S.P.M Land Dispute Tribunal case number 22 of 2009 adopted on 7/4/2009. Costs of this suit to the Exparte Applicant.

DATED AND DELIVERED THIS 28th DAY OF FEBRUARY, 2020

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

In the presence of:

Emukule for Applicant

Interested party in person.

A.O. OMBWAYO

ENVIRONMENT & LAND

JUDGE