



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. APPLICATION NO.123 OF 2011

JULIUS WEKULO.....1ST APPLICANT

VINCENT WAFULA.....2ND APPLICANT

VERSUS

TECLA CHEMWA.....1ST RESPONDENT

TERESA MAKOKHA.....2ND RESPONDENT

RULING

[1] The exparte applicants filed the Notice of motion herein seeking for orders of certiorari to remove into Court and quash the decision of Kakamega Provincial Land Appeals Tribunal was which read and adopted as judgement of the Court on 18/8/2011 in Bungoma CMCC Land Disputes Tribunal Case No.22 of 2007 together with the said adoption.

The exparte applicants state that the Western Provincial Land Disputes Tribunal had no jurisdiction to entertain the claim. The exparte applicants argue that the powers of the Land Disputes Tribunal are clearly set out in the Land Disputes Tribunal Act No.18 of 1990 (now repealed).

That by dint of section 3(1) thereof their powers are limited to division of or determination of boundaries to land and claims to work or occupy land or trespass to land.

That for anything else beyond these issues, the tribunal is not conferred with jurisdiction.

[2] The interested parties in their submissions say that they went to Kanduyi Land Disputes Tribunal claiming 10 acres and 15 acres as their share from their blood brothers the exparte applicants.

That the award was read and adopted as judgement of the Court vide Bungoma Chief Magistrate's Court on 10/5/2007. They state that this judgement remains undisturbed to date. The respondents argue that though the Provincial Lands Dispute Appeal Tribunal reduced their award from 12 to 6 acres That Tribunals orders may be quashed but the Kanduyi Land Disputes Tribunals order remains undisturbed because it was read and adopted by the Court way back on 10/5/2007.

[3] The jurisdiction of Land Disputes Tribunals is set out in *section 3(1) of the Land Disputes Tribunal Act No.18 of 1990*. The issue that was before the Kanduyi Lands Dispute Tribunal was the subdivision of E.Bukusu/E. Sangalo/907. The interested party/respondents were claiming 12 acres out of the same. The tribunal awarded them 12 acres out of the same. This was eventually reduced to six acres by the Western Provincial Land Disputes Appeal Tribunal. The claim that was before the two tribunals was subdivision

and Title to land. This is not one of the mandates and jurisdiction given to the tribunal by Act 18 of 1990. When the two tribunals purported to deal with title to land they were well out of their jurisdiction.

[4] The issue of Land Disputes Tribunal not having jurisdiction on the issue of title to land is a well beaten truck. The Court of Appeal and the High Court in numerous decisions have said that those Tribunals do not have jurisdiction to entertain Title to land

1. Civil Appeal No.157 of 2001

Asman Maloba Wepukhulu & another -vs- Francis Wakwabubi

Civil Appeal No.80 of 2002

Jonathan Wafula Mbinga -vs- Kalaka Wabwire

Civil Appeal No.47 of 2009

Zebedayo Korosia -vs- Eliud Wepukhulu Khauka and another

[5] When Courts and Tribunals Act without jurisdiction their Actions amount to nothing See;

Owners of motor vessel "Lillian S" v Caltex oil(Kenya)Ltd [1989] KLR 1

When the Kanduyi Land Disputes Tribunal purported to act without jurisdiction its actions amounted to nothing. The subsequent confirmation of its award by the Bungoma Chief Magistrate's Court was also an act in futility. There was no award that was capable of being confirmed.

The exparte applicants will have to go back and approach the Court with jurisdiction to entertain their claim.

The orders of the Kanduyi Land Disputes Tribunal is quashed and set aside. The subsequent confirmation of that order by the Bungoma Chief Magistrate's Court is also set aside. Likewise, the decision of the Western Province Land Disputes Appeals Tribunal is also set aside.

The parties are members of the same family.

I will therefore make no order as to costs.

Judgment read in open court.

DATED and DELIVERED at BUNGOMA this 10th day of March 2017.

S.N. MUKUNYA

JUDGE

In the presence of:

Court Assistants - Chemutai/Joy

Mr. Musumba - For the last Party Applicant

Miss Gachuru - For Lukorito for interested Party