



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU

MISC. APPL.NO.178 OF 2011

IN THE MATTER OF AN APPLICATION

BY MARY VERONICA HALWENGE

AND

IN THE MATTER OF KISUMU EAST DISTRICT LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF LAND PARCEL NO.KISUMU/KONYA/2919

MARY VERONICA HALWENGE.....EXPARTE APPLICANT

VERSUS

KISUMU EAST DISTRICT LAND DISPUTES TRIBUNAL.....RESPONDENT

BENTA AUMA KOYO.....THE INTERESTED PARTY

JUDGMENT

1. **Mary Veronica Halwenge**, the Exparte Applicant, filed the notice of motion dated 8th August 2011 under **Order 53 Rule 3 of Civil Procedure Rules** seeking for certiorari and Prohibition Orders in respect of the **Kisumu East District Land Disputes Tribunal** award in case number **1 of 2010** in respect of land parcel **Kisumu/Konya/2919** on the ground that the Tribunal did not have the jurisdiction to entertain the dispute. The exparte Applicant had applied for and obtained leave to file the substantive application on 4th August 2011.

2. **Benta Auma Koyo**, the interested Party, filed a replying affidavit sworn on 17th January 2012 and undated document headed "**defence statement/response**" on the 9th December 2014 in which she claims ownership of the land alleging that her late husband, **Leonidas Koyo Gola**, never sold it to **Charles Halwenge Otieno**.

3. The Attorney General filed the memorandum of appearance dated 19th April 2012 for **Kisumu East District Land Disputes Tribunal, Respondent**, and has conceded to the Exparte Applicant's notice of motion .

4. The Exparte Applicant counsel filed written submissions dated 12th March 2015 on the 15th October

2015 pointing out that the tribunal did not have jurisdiction over disputes on title to land. The counsel referred the court to the following decisions:

- i) Asumani Maloba -V- Peter Juna Matumbai Civil Appeal No.105 of 2002.**
- ii) Republic -V- Chairman, Nandi Division & Paul Fundi Tuwei Exparte Marthaa Jerogony Cheres Eldoret HC MCA No.164 of 2005.**
- iii) Johthan Amunari -V- The Charmian Sabatia division Land Disputes Tribunal & Another Civil Appeal No.256 of 2002.**

5. The following are the issues for the courts determination:

- a) Whether the tribunal had jurisdiction to deal with the dispute before it.
- b) Whether the tribunal decision was ultra vires its jurisdiction in view of **Section 3(1)** of the repealed Land Disputes Tribunal Act No.18 of 1990.

6. The court has carefully considered the grounds on the notice of motion, the statement of facts, verifying affidavit, replying affidavit, defence statement, written submission by Eparte Applicant's counsel and come to the following determinations:

a) That from the copy of the title deed for land parcel **Kisumu/Konya/2919** attached to the verifying affidavit, the suit land register was first opened on 14th March 1991 and registered in the names of **Charles Halwenge Otieno** on 2nd June 1993. That also attached to the verifying affidavit is a copy of the grant issued in Mombasa H.C Succession Cause No.75 of 2009 on 3rd March 2010 indicating that the said **Charles Halwenge Otieno** died on 5th January 2009 and that **Mary Veronica Halwenge**, the Exparte Applicant herein, had been appointed the administratrix of the deceased's estate on the 18th February 2010.

b) That the copy of the **Kisumu East District Land Disputes Tribunal** proceedings attached to the verifying affidavit shows **Benta Auma Koyo**, the interested Party, had lodged a claim of title to land parcel **Kisumu/Konya/2919** against the Exparte Applicant in 2010. There is nothing on record to confirm whether the interested party had by then obtained letters of Administration in respect of the estate of **Leonidas Koyo Ogola** who she reported had died on 5th May 1999. That the Land Disputes Tribunal award was that the land in dispute be transferred from the names of **“Charles Halwenge Otieno to Benta Auma Koyo.”**

c) That the tribunal powers were as limited under **Section 3(1) of the repealed Land Despites Tribunal Act No.18 of 1990** and did not include deciding on issues of title to registered land. The dispute the interested Party had lodged before the **Kisumu East Land Disputes Tribunal** was outside the Tribunal's powers. Further, the award made by the said tribunal taking the title of the said land from the estate of the late **Charles Halwenge Otieno** and conferring it on **Benta Auma Koyo** was ultra vires their powers.

d) That in view of the foregoing the proceedings in case **No.1 of 2010** before **Kisumu East Land District Land Disputes Tribunal** in respect of land Parcel **Kisumu/Konya/2919** was nullity and their award therefore null and void. The following decisions are relevant in this matter;

- i) Asumani Maloba -V- Peter Juna Matumbai Civil Appeal No.105 of 2002.**
- ii) Republic -V- Chairman, Nandi Division & Paul Fundi Tuwei Exparte Marthaa Jerogony Cheres Eldoret HC MCA No.164 of 2005.**
- iii) Jotham Amunari -V- The Chairman Sabatia Division Land Disputes Tribunal & Another Civil Appeal No.256 of 2002.**

The Exparte Applicant notice of motion dated 8th August 2011 has merit and is allowed a prayed with costs being paid by the Interested party.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 14TH DAY OF SEPTEMBER 2016

In presence of;

EXPARTE APLICANT Absent

Respondent Absent

INTERESTED PARTY

Counsel Mr Mwasibwa for the Exparte Applicant.

S.M. KIBUNJA

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S.M. Kibunja J

Parties absent

Mr Mwasibwa for the Exparte Applicant.

Court; Judgment dated and delivered in open court in presence of Mwasibwa for the Exparte Applicant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

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