



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

ENVIRONMENT & LAND COURT

JUDICIAL REVIEW CASE NO.23 OF 2013

REPUBLICAPPLICANT

VERSUS

THE KISUMU WEST DISTRICT LAND DISPUTES TRIBUNAL1ST RESPONDENT

THE CHIEF MAGISTRATE'S COURT KISUMU2ND RESPONDENT

VERSUS

AMBROSE ABSALOM NYANGAWO.....1ST INTERESTED PARTY

GEORGE MIEN MIYAWA2ND INTERESTED PARTY

J U D G M E N T

1. Ambrose Absalom Nyangawo, described as the 1st interested Party but who will hereinafter be referred to as the Exparte Applicant, filed the notice of Motion dated 21st February 2014 seeking for an order of certiorari to call into this court and quash the Kisumu West Land Dispute Tribunal award granting the claimant one acre of land from **Kisumu/Marera/436** in Land Case number 5 of 2003. The Applicant also prays for an order of certiorari to call into the court and quash the adoption order of the said Tribunal's award in Kisumu CMCC Land Case No.18 of 2012 and a prohibition order against the Kisumu County Land Registrar and Surveyor restraining them from executing the said Tribunal's award. Finally, the Applicant prays for costs.

The Application is based on the Applicant's statement of facts and verifying affidavit sworn on 21st February 2012.

2. The Exparte Applicant's case is that he is the registered proprietor of the **Kisumu/Marera/436**, hereinafter referred to as the suit land, since 22nd March 1974 as shown in the copy of the certificate of official search annexed to the verifying affidavit. That one George Mien Miyawa, the interested party, filed a claim with Kisumu West District Land dispute Tribunal Under case No.5 of 2003 and the Tribunal awarded him one acre under their award dated 1^{3th} July 2010. The award was adopted in CMCC Land Case No.18 of 2010 on 12th October 2010 and a decree dated 18th November 2010 issued. The Exparte Applicant annexed copies of Tribunal proceeding and Chief Magistrates decree to the verifying affidavit. The Exparte Applicant was not satisfied and filed an appeal with the Provincial Land Disputes Appeals Committee Case No.62 of 2010 as

confirmed in the letter dated 10th August 2010 annexed to the verifying affidavit. The appeal was not heard as the Appeal Committee was disbanded following the repealing of the Land Disputes Tribunal Act by the Environment and Land Court Act No.19 of 2011. The Exparte Applicant then commenced the current proceedings faulting the Tribunal on jurisdiction.

The interested party apposed the application through the replying affidavit sworn on 28th May 2015. The interested party deponed that the orders of certiorari cannot

issue as the period of over one year had passed by the time the application was filed. That the order of prohibition cannot issue as what it seeks to stop has already been done. Further that the Land Disputes Tribunal and the lower court had jurisdiction to issue the orders that they did.

3. The Exparte Applicant's counsel filed their written submissions dated 8th June 2015 while the interested party's filed theirs on 26th June 2015. The main issue for determination are as follows:

(a) Whether the Land dispute Tribunal had jurisdiction to make orders conferring ownership of land registered under the Registered Land Act Chapter 300 of Laws of Kenya (repealed).

(b) Who pays the costs.

4. The court has considered the grounds on the statement of facts, evidence affidavit and submissions presented by both the Exparte Applicant and Interested Party and come to the following findings:

4. (a) That the jurisdiction of the Land Disputes Tribunal was as limited under Section 3 of the Land Dispute Act No.18 of 1990. The section limited the Tribunals powers to matters of division or determination of boundaries to land, claims to occupy or work land and trespass to land. The powers do not include determining questions of ownership or registrations of land that was registered under the then Registered Land Act.

(b) That ones leave is applied for exparte and granted a party who wishes to challenge that leave has to formally move the court for the desired orders. The party cannot challenge the order granting the leave through the submissions on the notice of motion for the substantive orders as the interested party seeks to do in this matter.

(c) That the interested party's claim before the Tribunal was for land parcel Kisumu/Marera/436. This is apparent from the copy of the Tribunal proceedings. The copy of the certificate of official search shows that land was registered on 22nd March 1974 with Abrose Absolm Nyangau, the Exparte Applicant. The land is therefore registered under the Registered Land Act (repealed).

(d) That the Tribunal's order that " George Mien Muyawa get a surveyor to curve out his land measuring one (1) acre to be registered in his name," was an order alienating that portion of land and conferring ownership and title to the Interested Party. This was evidently beyond the powers of the Tribunal as limited under Section 3 of the Land disputes Tribunal Act (repealed).

(e) That the Tribunal order was made without jurisdiction and is therefore ultra vires, null and void and is to be quashed. That ones the Tribunal order is quashed, there would be no need to issue a similar order against the Lower Court's adoption proceedings as that order would have no basis. There also would be no order for the county Land Registrar and Surveyor to execute and likewise there is no need to issue the prohibition order prayed for.

5. That having found as above the Exparte Applicant's notice of motion dated 21st February 2014 is found to be meritorious and is awarded in the following terms:

(a) That an order of certiorari is hereby issued calling into this court and quashing the award of Kisumu West District Land Disputes Tribunal award in case No.5 of 2003 granting

one acre of Kisumu/Marera/436 to the interested party.

(b) As the Exparte Applicant had not enjoined the interested party in the proceedings, and that it is the interested party who applied to be so enjoined, each party will bear his own costs.

S.M. KIBUNJA

Envelopment and land – Judge

Dated and delivered this **4th day of November 2015**

In presence of

Exparte Applicant N/A

Interested Party N/A

Counsel M/S Njogu for Kasamani for Exparte Applicant

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

4.11/2015

4/11/2015

S. M. Kibunja J

Oyugi Court clerk

Parties absent

M/S Njogu for Kasamani for 1st Interested party

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

4/11/2015

Court: Judgment delivered and dated in open court in presence of M/s Njogu for Kasamani for 1st Interested party/Exparte Applicant.

SM. KIBUNJA

ENVIRONMENT & LAND – JUDGE

4/11/2015