



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

JUDICIAL REVIEW NO. 27 OF 2012

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW BY ISABELLA
INZAMBULA ISIBWA FOR JUDICIAL REVIEW**

AND

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990 IN THE
ILEHO DIVISION LAND DISPUTES TRIBUNAL AWARD NO. 7 OF 2011 AND KAKAMEGA
CHIEF MAGISTRATE AWARD MISC APPLICATION**

AND

REPUBLIC APPLICANT

AND

THE CHAIRMAN, ILEHO DIVISION

LAND DISPUTES TRIBUNALRESPONDENT

VERSUS

ISABELLA INZAMBULA ISIBWA EX-PARTE APPLICANT

AND

COLLETA NANDWA KHALENYA)

DINA WANDUKU NANDWAINTERESTED PARTIES

RULING

Before me is a Notice of Motion for Judicial Review dated 10/6/2012 and filed on 20/6/2012. The application was brought under **Order 53 rules 1 & 2** of the Civil Procedure Rules. The prayers are as follows -

- 1. That the applicant Isabella Inzambula Isimbwa be granted orders of Certiorari to remove into this Honourable court and quash the proceedings and award of the Ileho Division Land**

Disputes Tribunal in its claim No. 7 of 2011.

2. That the costs of this application be provided for.

The application was filed with a supporting affidavit, which I will ignore since no leave was granted for the filing of this affidavit. In Judicial Review matters, the affidavits and documents to be relied on are those that were filed with the Chamber Summons for leave, unless leave is granted to file additional affidavits.

In the present case, there is an affidavit sworn by the ex-parte application on 6/4/12 filed with the Chamber Summons for leave. The said affidavit annexed a copy of a Title Deed issued to the applicant under the Registered Land Act (Cap 300). Also annexed was the Ruling of the Land Disputes Tribunal in respect of the subject land Kakamega/Kambiri/922. In addition to the affidavit, the applicant filed a statement of facts with the application for leave. This statement of facts gives the grounds and the reliefs sought. The application was filed on behalf of the ex-parte applicant by his counsel J. J. Mukavale Advocate.

The representative of the Attorney General, Mr. Onyiso stated during mentions of the application, that the respondents were not interested in filing a response.

The interested party Colletta Nandwa stated that they would file a response. Mr. MS Gichaba Ondieki & Company advocates on 8/10/2013 filed a Notice of Appointment for the interested party. However, they did not file any response to the application on behalf of the interested party.

The matter was put for mention on 27/02/2014 to confirm that submissions had been filed. On 3/4/2014 only Mr. Shivega appeared for the ex-parte applicants and a ruling date was fixed for 15/5/2014 with notice to be served, after only ex-parte applicants through their advocates had filed written submissions.

This is an application for Orders of Certiorari. Such orders are granted by the High Court, to quash decisions of public officials or Tribunals which make judicial or quasi judicial decisions, when such decisions are illegal, or done outside their jurisdiction or done in bad faith.

I have perused the decision of the Land Tribunal. It states as follows -

“RULING.

From issue A – the portion of land on the ground measuring 25m x 20m is occupied by the claimants Mrs. Colleta Khalenya Nandwa and Mrs. Diana Wanduku Nandwa, the widows of the their husband Mr. Mariko Makamu Nandwa who owned the land parcel. The family has owned the land openly, peacefully, continuously and without interruption for 14 years. The Tribunal panel therefore rules that the portion of land in dispute measuring 25 x20m as demarcated on the ground remain and should be owned by the claimants and nuclear families that is Mrs. Colleta Kalenya Nandwa and her children and Mrs. Diana Nandwa and her children.

On issue B – the portion of land on the ground measuring approximately 2 acres remain as demarcated on the ground and should be owned by Mrs. Isabella Inzavula Isimbwa and her family.

The services of a Government Surveyor should be sought to move to the land and survey the two portions separately following the existing boundaries. Separate land Title Deeds should be processed and issued to the two families.”

The above decision of the Tribunal was clearly beyond the powers of a Land Disputes Tribunal. The jurisdiction of Land Disputes Tribunals is spelt out under Section 3 (1) of the Land Disputes Tribunal Act, which states as follows –

“S.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.**

Shall be heard and determined by a Tribunal established under section 4.”

It is clear from the above statutory provisions that the Tribunal went beyond their powers in making its decision. It had no powers to determine ownership to land as it did under issue A. It also had no powers to determine ownership of land as it did under issue B. It also had no powers to order that a surveyor should move on the land to survey the two portions separately. It had no power to order that title deeds be processed and issued to the two parties accordingly.

The powers of the Tribunal are clear from the provisions of Section 3 (1) above of the enabling Act. The Tribunal had power to determine boundaries which are in dispute. They had powers to determine matters to deal with occupation and use of land. They also had powers to deal with trespass. None of these were in dispute in the proceedings before the Tribunal. They certainly did not have power to determine issues of title to land or ownership or ordering the Government surveyor to survey the portions of land, and ordering issuance of Title Deeds.

In my view, the application herein has merits. The Certiorari orders will issue. As for costs, since neither the respondent nor the interested parties filed any response to the application, I will make no order as to costs.

In conclusion, I allow the application, and grant the certiorari orders sought. I make no order as to costs.

Dated and delivered at Kakamega this 15th day of May, 2014

George Dulu

JUDGE