



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CIVIL MISC. APPLICATION NO.165 OF 2005

IN THE MATTER OF: AN APPLICATION BY MOSES WENANI ZAKARI FOR ORDERS OF JUDICIAL REVIEW

AND

IN THE MATTER OF: LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN,

WEBUYE LAND DISPUTES TRIBUNAL.....RESPONDENT

EX-PARTE

MOSES WENANI ZAKARI.....APPLICANT

AND

METRINE NEKESA MATUMBAL.....INTERESTED PARTY

JUDGMENT

1. The exparte applicant filed the motion dated 30th June 2005 in which he seeks Judicial review orders of certiorari to remove into this Court and quash the decision of Webuye LDT which was read and adopted as judgment of the Court on 8th February 2005 in Webuye Resident Magistrate Court Case No.4 of 2005. Leave to apply for the Judicial review orders was granted on 23.6.2005 vide Miscellaneous Civil Application No.154 of 2005.

2. The motion is supported by the grounds on the face of it, the affidavit of Moses Wenani Zakari – the exparte applicant and the statement filed therein. The motion was initially opposed by the interested party who filed a replying affidavit, dated 20th February, 2009. The Court records show this affidavit was expunged on 11th October 2010 having been filed out of time and without leave of the Court. The Court did grant the interested party leave to file a fresh replying affidavit within 14 days of that date. None seems to have been filed. The application as it stands therefore is unopposed. Be that as it may, I will still consider whether it is merited.

3. The interested party's claim before the tribunal was that the clan had sub-divided their father's land amongst their four siblings. The ex parte applicant uprooted the boundaries and proceeded to acquire title deed for the entire 4 acres. After hearing the dispute, the tribunal made the following award;

“1. The objector is the only son of the late Zakaria Matumbai

2. The objector completed the payments for the land in dispute

3. This Court of elders rules that this disputed parcel of the land be shared as follows:

(a) Moses Wephukulu – 1ha

(b) Zipora Wephukulu – 0.2ha

(c) Metrine Nekesa – 0.2ha

(d) Beatrice Nasambu – 0.2ha

4. At the time the elders reached this decision, the Objector (ex parte applicant) had already acquired the title deed for the disputed land parcel Bokoli/Bokoli/1970. The interested party's claim in my view was based on trust. That the ex parte applicant acquired title on their behalf and therefore held the title for the disputed land in trust for the whole family. The other possible claim of the interested party is that being children of the late Zakariah Matumbai they were entitled to inherit this land. This second option would be viable through a claim lodged in a Succession Cause. In both instances, the Land Disputes tribunal had no jurisdiction to hear either of the claims, reference is made to the case of M'Marete Vs Republic & 3 Others (2004) & KLR in which the Court of Appeal said thus;

“Awarding land to the claimant meant she acquired an interest in it by virtue of that award. In order to put that ruling into effect, the appellant will have to rectify or cancel the titles, the tribunal went beyond its jurisdiction.”

5. The upshot of this is that I find the motion as merited and allow it. Given the parties are 'siblings', I order that each to bear their own costs.

Dated, Signed and Delivered in Bungoma this 16th day of July, 2014

A. OMOLLO

JUDGE