



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**JUDICIAL REVIEW NO. 18 OF 2011**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHAIRMAN**

**LUGARI LAND DISPUTES TRIBUNAL ..... RESPONDENT**

**FULL GOSPEL CHURCH ..... 1<sup>ST</sup> INTERESTED PARTY**

**JAMES NDUNGU ..... 2<sup>ND</sup> INTERESTED PARTY**

**BEATRICE KHAYANJE RIDWEYS ..... EX-PARTE APPLICANT**

**R U L I N G**

The ex-parte applicant is seeking an order of certiorari so that the decision of the Lugari Land disputes Tribunal in relation to plot number **KAKAMEGA/LUMAKANDA/5287** is quashed. The parties agreed to file written submissions to argue the application but none were filed.

The gist of the application is that the applicant is the registered owner of the suit land having purchased it from the 2<sup>nd</sup> interested party on 10.7.2008. The 1<sup>st</sup> interested party sued the 2<sup>nd</sup> interested party before the Lugari Land Disputes Tribunal vide case number 13 of 2009 and this culminated to Butali SRM Land Award number 22 of 2009. The applicant contends that she was the registered owner of the suit land but was not included in the dispute before the tribunal. She therefore seeks to have the decision of the tribunal quashed as it lacked jurisdiction to deal with her property without involving her.

The 1<sup>st</sup> interested party filed a notice of preliminary objection as well as a replying affidavit. The 1<sup>st</sup> interested party maintains that the application is filed out of time and that the 2<sup>nd</sup> interested party colluded with the applicant and sold the plot during the 2007 postelection violence. It is contended that the land belonged to the church and the 2<sup>nd</sup> interested party had no capacity to sell it.

I have gone through the pleadings before the Land Disputes tribunal. The Full Gospel Church filed the matter before the tribunal indicating that it bought a portion of land out of plot number **KAKAMEGA/LUMAKANDA/2043** in 2005. A church was built but when they were clashes in 2007 the church members dispersed. When they came back in 2008 they that the church had been demolished and on inquiry from the 2<sup>nd</sup> interested party who the church chairman they found that he had sold the land without involving them. On his part, the 2<sup>nd</sup> interested party indicated that he is the one who had loaned the church the purchase price of KShs.80,000/= that enabled the church to buy the plot. He was to be refunded his money after sometime but no refund was made. He decided to sell the plot.

The decision of the tribunal was that it recognized the transaction between the **Full Gospel Church** and one **ELGON KANANI KITAGWA**, the original seller, as valid and therefore the plot belongs to the church. The 2<sup>nd</sup> limb of the ruling is that any other document which might have been obtained for the same parcel of land should be deemed to have been obtained fraudulently and therefore null and void. From the pleadings before the tribunal it is indicated that the property was bought by the Full Gospel Church. The church has exhibited the sale agreement and a consent from the Lugari Land Control Board

issued on 24.12.1996 that enabled Elgon Kitagwa to buy the land from the previous owner **PAULINA**. There is a sale agreement between **ELPHAS KITAGWA** who I believe is the same person as **ELGON** dated 2.2.2005 whereby the plot was sold to the Full Gospel Churches of Kenya. It is clear that it was not the entire plot number 2043 that was sold to Elgon. The 2<sup>nd</sup> interested party has not shown how the land was transferred to him and subsequently transferred it to the applicant herein. Even if he had loaned the church the purchase price there is no evidence that Elgon transferred the property to the 2<sup>nd</sup> interested party. Before the tribunal Elgon Kitagwa testified that he sold the plot to the church.

Given the pleadings herein it is established that it is same plot that was sold to the church that was subsequently transferred to the applicant. The decision of the tribunal was merely an observation and did not order the cancellation of the applicant's title. All what the tribunal did was to declare that the title obtained by the applicant to have been fraudulently obtained. I am also satisfied that that title was obtained fraudulently as the 2<sup>nd</sup> interested party was not the registered owner of the suit property and if he was then he was holding the title in trust for the Full Gospel Church. The tribunal recognized the Full Gospel Churches transaction and ruled that the land belongs to the church. The applicant contends that the tribunal lacked jurisdiction to make such an order. From the pleadings herein I do find that the property belongs to the church. I will equate the ruling to recognition of the churches' claim to occupy and work on the land. It is established that the church bought the land and the 2<sup>nd</sup> interested party fraudulently transferred the property to the applicant. Granting the orders being sought is tantamount to sanctioning the activities of the 2<sup>nd</sup> interested party which were fraudulent.

There is nothing to quash as the decision of the tribunal did not cancel the applicant's title. I do find that the application lacks merit and the same is dismissed with no orders as to costs. The 1<sup>st</sup> interested party is at liberty to pursue the cancellation of the applicant's title through the normal court process.

Delivered, dated and signed at Kakamega this 10<sup>th</sup> day of July 2014

**SAID J. CHITEMBWE**

**J U D G E**