



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISCELLANEOUS CIVIL APPL. NO. 166 OF 2002

IN THE MATTER OF AN APPLICATION BY JACOB SIMIYU MBUTE FOR

JUDICIAL REVIEW ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 1 OF 1990

REPUBLIC..... APPLICANT

AND

THE HON. A.GON BEHALF OF CHAIRMAN

NALONDO LAND DISPUTES TRIBUNAL.....

.....RESPONDENTS

EXPARTE

JACOB SIMIYU MBUTEEX PARTE APPLICANT

VERSUS

SAMSON BIKOKWA KURANDA..... INTERESTED PARTY

JUDGMENT

1. The exparte applicant in a notice of motion dated 27th September 2002 sought judicial review orders in the following terms;
 - i. That may it please this Honourable court to issue an order of certiorari and prohibition to remove into this court and quash the decision of NALONDO LAND DISPUTES TRIBUNAL read and adopted as judgment of the Bungoma Chief Magistrate Court vide land case no 17 of 2002 on 14th June 2002 and prohibit the Nalondo Land Disputes Tribunal from ever properly to adjudicate matters in respect of land parcel n. E. BUKUSU/N. NALONDO/901 or at all
 - ii. That leave to operate as stay of land disputes tribunals decision

iii. Costs be in the cause

2. The basis for the application being that the tribunal had no jurisdiction to entertain the matter. The second reason was that the subject land had a title which is E. Bukusu/N. Nalondo/901. The Land disputes tribunal heard the case and issued an award of which was adopted on 14th June 2002 as an order of court in Bungoma CMC land case no. 13 of 2001.

3. The motion is opposed by both the interested party and the respondent. The interested party filed grounds of opposition on 17th March 2014 which did not raise any points of law or relevant facts to the application. For instance in ground one, the interested party states;

“That may I know who initiated the tribunal,” in ground 3, ***“that I want you to produce the agreement you made when buying the land.”*** He also submitted the ex parte applicant failed to appear before the Land Disputes Tribunal.

4. The respondent also filed their grounds of opposition on 10th April 2014 in which they said the application is incompetent and fatally defective in substance and form. The reason for the incompetence is given as the failure to include the chief magistrate court in the present application and in the application for leave. Secondly the respondent raises the issue that there is no decision apparent to quash as the tribunal award ceased to exist once it was adopted as the judgment of the court. Finally that the suit is time barred and prayed that the present application be dismissed with costs. The Respondent cited the case of **Sammy W. Malesi vs. Republic & 2 others, Kitale HC Misc. Civ. App. no. 55 of 2007(unreported)**.

5. The decision of the tribunal sought to be quashed read as follows; **“The elders resolved that Mr. Samson Bikokwa Kuranda ID/2986209 be given his piece of land which is 3 acres.”** This award was adopted as an order of the court on 14th June 2002. The law provides that an application for judicial review orders ought to be commenced within months from the time of the decision to be challenged is made. In the instant case, the decision of the tribunal is not dated and the only date available is when it was adopted in court on 14.6.2002.

6. The present application was filed on 30th September 2002 which is approximately 3 months from 14.6.2002. The ground that the suit is time barred therefore does not lie. On the want of form for failing to join the Chief Magistrate's court as a party to these proceedings, no specific of the Law Reform Act or Order 53 is cited to have been breached which failure then would render the application fatal. The case of **Sammy W. Malesi supra** is a decision from a court of concurrent jurisdiction and therefore is not binding on this court. I hold a different view that failure to join the chief magistrate's court is not fatal as that court while adopting the award does perform an administrative duty as provided in section 7 of the Land Disputes Tribunal Act. In any event the orders sought if granted will not in any way infringe on the rights of that court.

7. The substance of the application that the tribunal exceeded its mandate has not been disputed either by the interested party or the respondent. The powers of the Land Disputes Tribunal are donated by Sec. 3 (1) of the Act. From the evidence of the interested party presented before the tribunal, it showed the exparte applicant had bought the suit land in question. When the interested party filed his complaint before the tribunal, the exparte applicant was the registered owner of the suitland. The interested party's complaint was therefore that his brother Vincent Simiyu Kuranda had sold the whole land yet he was also entitled to a share. The dispute was thus a claim on ownership of land which does not fall under the mandate of the Land Disputes Tribunal. In awarding the interested party 3 acres from the suitland amounted to an exercise in excess of jurisdiction. It is without a doubt that the award of the tribunal read and adopted as an order of the court in its execution would result in cancellation of the exparte applicant's title. In conclusion, I do find the notice of motion dated 27.9.02 merited and hereby grant the prayers sought and order that each party to bear its costs.

Dated, Signed and Delivered in Bungoma this 8th day of July 2014.

A. OMOLLO

JUDGE