



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

JR 60 OF 2011

JOSEPH OUMA ADONGO.....PLAINTIFF

VERSUS

NYANZA LAND DISPUTES APPEAL COMMITTEE

THE PRINCIPAL MAGISTRATE'S COURT NYANDO

THE HON. ATTORNEY GENERAL.....DEFENDANT

J U D G M E N T

1. The Exparte applicant herein – **JOSEPH OUMA ADONGO** – felt aggrieved by the decision of Nyanza Land Disputes Appeals Committee which directed him to effect transfer of Land parcel No. **KSM/BORDER II/4** (also described as **KISUMU/BORDER/4**) to the interested party herein – **WILLIAM OPIYO OKUMU**.
2. From the records, it appears that the dispute concerning that parcel of land (which is hereafter the suit land) started much earlier before the area local chief before proceeding to Nyando Land Disputes Tribunal. The decision was the same all along: The applicant herein was to transfer the suit land to the interested party. There was however one acre which was to remain with the the applicant awarded, it appears, because his family took care of the land for the respondents when the respondents family had migrated to some place in Tanzania.
3. The decision of Nyanza Land Disputes Appeals Committee was an affirmation of the earlier decisions. But all these decisions addressed the merits of the case, which is not what this Court is doing now.
4. The thrust of the court's approach is concerned with jurisdiction, not merits. The exparte applicant is simply saying that the Appeals Committee had no jurisdiction to hand down the decision it gave. He therefore wants an order of **CERTIORARI** to quash that decision and an order of **PROHIBITION** against District Land Registrar, Awasi, enjoining against implementing or effecting that decision.
5. It would appear that the interested party filed a replying affidavit. I say it appears because I don't see the replying affidavit in the court file. Instead what I see is a copy of such replying affidavit. It appears as an annexure and is marked “**WILLIAM OYOO WOOS**”.
6. In that copy, the interested party says he is the rightful owner of the suit land. He then gives some history justifying his claim to ownership. Like the tribunals which handled the dispute, the interested party is actually concerned with merit. And the history he gives actually address such merit.
7. The Respondents in this case are **NYANZA PROVINCIAL LAND DISPUTES APPEAL COMMITTEE (2) THE PRINCIPAL MAGISTRATES COURT, NYANDO (3) THE**

DISTRICT LAND REGISTRAR AT AWASI and (4) **THE HON. ATTORNEY GENERAL**. The office of the AG appeared for all the respondents and on 13/2/2014 it conceded to the application.

8. The interested party didn't file submissions. Mwamu for the interested party proposed that the court relies on the replying affidavit.
9. The *exparte* Applicant's submissions are on record. They are dated 16/9/2013. The submissions generally reiterate what is in the applicant's pleadings but in addition, two decided authorities were availed viz:

(a) **IN THE MATTER OF KISUMU EAST/WEST LAND DISPUTES TRIBUNAL – EXPARTE STEPHEN MIYUNGI ODHIAMBO HCC MISC APPL.NO.32/09**

(b) **R V KANGUNDO LAND DISPUTES TRIBUNAL & ANOTHER EXPARTE HENRY MUTISYA MISC.APPL. NO.117/2008, MACHAKOS.**

10. Both authorities cited concerned decisions which were quashed by the Courts because the relevant Land Disputes Tribunals had no jurisdiction to make them.
11. In this instant case, the jurisdiction of the tribunal, just like in the decided authorities availed, is to be found in the now repealed Land Disputes Tribunal's Act No.18 of 1990. Section 3(1) of that statute spelt out the jurisdiction of the tribunal. In essence, the tribunal had jurisdiction to decide on.

- (a) Division of, or determination of boundaries to, land including land held in common.
- (b) A claim to work or occupy land and
- (c) Trespass to land.

12. The Land Appeals committee in this case decided that the suit land belonged to the interested party and should therefore be transferred to him. In effect, it decided on ownership. It is plain that it didn't have the mandate to do so. The relevant provisions of law didn't clothe it with jurisdiction to decide on ownership. The Appeals Committee therefore acted under serious misdirection.

13. From a legal standpoint, if a court or tribunal has no jurisdiction over a matter, its judgment or orders, however precise, certain or correct are mere nullities. They are not only voidable but void. They may be set aside or quashed any time.

14. Excess or lack of jurisdiction would occur where the tribunal is improperly constituted. It would occur too if the tribunal is not competent to adjudicate on a matter whether that arises from the locality or subject matter of the dispute. A tribunal would also lack jurisdiction if the essential preliminary requirements have been disregarded or, having jurisdiction in the first place, makes orders beyond its competence or entertains matters it has no mandate to entertain.

15. It is important to observe here that I am not delving into the merits of the case. I am merely addressing myself to the mandate of the Appeals committee. I have looked at the copy of the replying affidavit in the court file. The interested party was trying to address the merit of the case. He was wrong. The crux of the matter revolves around jurisdiction, not merits. And on this score, it is easy to understand why the respondents conceded to the suit. It is also not difficult to guess why the counsel representing the interested party did not file submissions.

16. The decided authorities availed are apt and helpful. They followed a long chain of other decided authorities such as **R V THE CHAIRMAN, MERU CENTRAL DISPUTES TRIBUNAL EXPARTE JAPHET KINYUA: HCC NO.MISC.187/05, MERU, and R V NYAMAIYA LANDS DISPUTE'S TRIBUNAL & 3 OTHERS EXPARTE BENARD ONDIEKI YOHANA: HCC MISC APPL. NO.1/2009, KISII**, where the courts quashed the decisions of the tribunals upon finding that the tribunals lacked jurisdiction.

17. I agree with the *Exparte* applicant in this case that the Appeals Committee had no jurisdiction to make the decision being challenged. I therefore grant an order of **CERTIORARI** and **PROHIBITION** as prayed.

18. Provision for costs was also asked for. It seems to me that it is the respondents, not the interested party, who can be faulted for being in error. It would not be proper in my view to condemn the interested party to bear costs. Accordingly each side has to bear its own costs.

A.K. KANIARU – JUDGE

7/10/2014

7/10/2014

A.K. Kaniaru – Judge

Dianga – Court clerk

No party present

Interpretation: English/Kiswahili

M/s Langat (A.G's office) for Respondent

Other counsels absent

COURT: Judgment read and delivered in open **COURT**.

Right of Appeal – 30 days.

A.K. KANIARU – JUDGE

7/10/2014