



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

JUDICIAL REVIEW NO. 53 OF 2010

AND

IN THE MATTER OF ORDER 53 RULE 1 OF THE CIVIL PROCEDURE ACT

AND

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE CHAIRMAN, EMUHAYA LAND DISPUTES TRIBUNAL....RESPONDENT

AND

CHARLES INYAMBUKHO ESITAMBALE..... INTERESTED PARTY

EX PARTE: ALFRED ESITIBA EBITA

J U D G M E N T

1. **Alfred Asitiba Ebita**, (the Ex-parte Applicant), filed a Notice of Motion dated 4/1/2011, brought under Order 53 rule 3 (1) of the Civil Procedure Rules, (2010). Sections 8 and 9 of the Law Reform Act (Cap.26) Laws of Kenya, seeking an order of Certiorari to remove into this court for purposes of quashing the decision of Emuhaya Land Disputes Tribunal made in Case No. 2 of 2010. The Notice of Motion was filed pursuant to leave of the court granted on 15/12/2010.

2. The Ex-parte applicant's complaints against the Tribunal are that;

“The Tribunal exceeded its jurisdiction in purporting to give the interested party judgment for specific performance; the Tribunal exceeded its jurisdiction by giving validity to an invalid land sale transaction; that the decision of the Tribunal is ambiguous and finally that the Tribunal exceeded its jurisdiction by purporting to cancel the Ex-parte applicant's title deed.”

3. On 22/2/2011, The Hon. Attorney General filed a Notice of appointment, intimating he was acting for

the 1st and 2nd Respondents to the application. However, from the Headings, I can only see one Respondent in this matter. The Firm of Imuene & Co. Advocates filed a Notice of appointment on behalf of Charles Inyambukho Estambale, the interested party.

4. The parties appeared before Kimaru, J. on 3/6/2011, when the interested party was granted leave to file and serve a replying affidavit within 14 days, and parties were to file and exchange written submissions within 30 days. The Motion was then set for hearing on 13/10/2011, but this did not happen. When the matter finally came before me on 15/10/2014, only the Ex-parte applicant's counsel was present and the only one who had filed submissions. The other parties had not, and therefore, a date for judgment was reserved.

5. Counsel for the Ex-parte applicant, in their written submissions, argued that the complaint filed before the Land Disputes Tribunal was ambiguous and that the Tribunal also gave an ambiguous decision as a result. Counsel submitted that the proceedings and verdict of the Emuhaya Land Disputes Tribunal dated 29/10/2010 is not clear and that there is no harmony between the proceedings before the Tribunal and the verdict reached, which according to counsel also was outside the mandate of the Tribunal.

6. Counsel further argued, that the verdict rendered by the Tribunal is incapable of being enforced in accordance with Section 7 of the Land Disputes Tribunal Act (now repealed). Counsel was of the view, that the Tribunal acted *ultra vires* as the interested party's claims before the Tribunal touched on title to land, and so is the verdict reached. He therefore urged the court to allow the motion as prayed.

7. I have considered the application in its entirety. I have also considered the material before me and submissions by counsel. The Notice of Motion seeks an order of Certiorari to remove into this court for purposes of quashing the decision of the Emuhaya Land Disputes Tribunal made in case No. 2 of 2010.

8. Although the face of the Motion does not contain the date of that decision, in the order granting leave, that decision seems to have been made on 29/10/2010. The leave granted was to operate as stay of proceedings that were now pending before Senior Resident Magistrate's Court at Vihiga in Award No. 48 of 2010.

9. I hope that those proceedings were stayed and that the award was not adopted as a judgment of the Vihiga Senior Resident Magistrate's court.

10. The impugned decision of the Tribunal was as follows –

“After going through the evidence adduced and documents presented in court and after listening to all the witnesses and verifying all that was on site, this court allows the complainant's plea so long as it is LIMITED up to the original fence which was pegged and fenced by the first Registered owner Mzee JAIRUS STANDI and not absolute so long as it is consistent, the requirements of Cap 300 Laws of Kenya.

The Crops of the objector within the designated plot of the complainant is hereby protected to maturity until is harvested by the objector and removed/cleared thereof.”

11. Looking at the decision of the Tribunal as reproduced above, it is not clear what that decision was. It is not clear whether the Tribunal was considering a boundary dispute or a claim for land. The words **“this court allows the complainant's plea so long as it is LIMITED up to the original fence which was pegged and fenced by the first registered owner...”** can be interpreted to mean that it was both a boundary and claim over land. This makes the decision ambiguous. When the whole decision is considered, it is difficult to tell what the decision was and how it could be implemented.

12. It is important that a quasi-judicial body such as the Respondent, makes a decision that is clear, unambiguous and easily understood by both parties to the case, and those charged with the responsibility of enforcing such a decision. There should be no room for speculation as to what the court said or intended to say.

13. I have looked at the evidence by the complainant (now the interested party) before the Tribunal, and it is clear that his complaint was that whereas he had purchased a portion of land, he later found that the whole parcel **East Bunyore/Ebusiratsi/1528** was now in the name of the Ex-parte applicant, prompting him to lodge the complaint before the Respondent.

14. From that evidence, it is clear that the Interested Party's complaint was a claim over land or title to land. The interested party appears to have been challenging the Ex-parte applicant's right of ownership of the land in question. This is clearly outside the mandate of the Respondent as was provided by **Section 3** of the Land Disputes Tribunal Act (No.18 of 1992 now repealed). The Respondent could not purport to exercise a discretion it did not have and its decision from those proceedings was clearly *ultra vires*.

15. For those reasons, I agree with counsel for the Ex-parte applicant, and I do hold that the Respondent's decision made on 29/10/2010, was not only ambiguous and incapable of implementation, but also *ultra vires* and therefore null and void.

16. The Notice of Motion dated 4/1/2011 succeeds, and an order of Certiorari is granted calling into this court for purposes of quashing the decision of the Emuhaya Land Disputes Tribunal made on 29.10.2010 in Case No. 2 of 2010. Costs of the application to the Ex-parte Applicant.

Dated and delivered at Kakamega this 4th day of November, 2014

E. C. MWITA

J U D G E