



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

Misc. App. No. 3 Of 2008.

IN THE MATTER OF THE REGISTERED LAND ACT.

AND

IN THE MATTER OF AN APPLCIATION BY ISAAC WAFULA & DISMAS

PEPELA FOR ORDERS OF CEDRTIORARI

AND

IN THE MATTER OF LR.NO.s. BUKHAYO/KISOKO/3641 & 3647 OVER BUSIA PM

LAND CASE NO. 59 OF 2007.

BETWEEN

REPUBLICAPPLICANT

VERSUS

NAMBALE LAND DISPUTES

TRIBUNALRESPONDENT

AND

RESILA AUMA KAFWAINTERESTED PARTY.

R U L I N G.

ISAAC WAFULA and DISMAS PEPELA, hereinafter referred to 1st and 2nd Applicant, through M/S. Ashioya& company Advocates filed a notice of motion dated 22nd March, 2008 for the following orders:

1. That an order of certiorari do issue to call to the High court and quash the decision of Nambale Land Disputes Tribunal over Land parcel Bukhayo/Kisoko/3641 and 3647 made on 2nd August 2007 and adopted by the Principal Magistrate's court Busia in land case No.59 of 1997 on the 29th January, 2008.
2. That cost be paid by the Respondent.

The application is based on the following grounds;

- a. That Nambale Land Disputes Tribunal dealt with a matter that was beyond their jurisdiction in view of sections 21 and 22 of the Registered Land Act (Now repealed).
- b. That the Tribunal's decision aimed at counseling the title of the Applicant and sub dividing the same is in excess of the Tribunal's powers under section 3 of the Land Disputes Tribunal Act. (Now repealed).

The application was served but no replying papers have been filed. The Exparte Applicant's counsel filed their written submissions dated 9th August, 2012 on the 13th August, 2012. The court has carefully considered the submission by counsel and the pleadings generally and find as follows:

1. That looking at the copy of the Nambale Land Dispute Tribunal proceedings annexed to the affidavit of Isaac Wafula sworn on 27th February, 2008 it is clear that the claim that had been taken before the Tribunal related to land parcel Bukhayo/Kisoko/3641. The Tribunal after hearing the parties made several decisions as shown here below;
 - a. After observing that Dismas Pepela occupies portions of Bukhayo/Kisoko/3641 and that his land is parcel Bukhayo/Kisoko/3047 which was a subdivision from Bukhayo/Kisoko/291 ordered that the Land Registrar and the Government Surveyor should determine the measurements and exact position of Dismas Pepela's land on the ground.
 - b. That Land parcel Bukhayo/Kisoko/3641 be sub divided between Isaac Wafula and Chrispinus Kafwa with the former getting 3 hectares and the latter the balance.
 - c. That after (a) and (b) above has been complied with, the Government Surveyor to plant the boundaries on the ground.
 - d. That Dismas Pepela to meet all the costs.
2. That while the heading in the Tribunal proceedings showed that the dispute was over Bukhayo/Kisoko/3641 the decision of the Tribunal involved also land parcel Bukhayo/Kisoko/3647.
3. That all the parcels of land listed hereinabove are registered and issues to do with their ownership was outside the powers granted to the Tribunal under section 3 (1) of the Land Disputes Tribunal Act. (now repealed).
4. That to carry out the decision of the Tribunal, would result to the cancelation of the title, sub division of the said land and transfer of portion thereof to the 3rd parties which is beyond the powers of the Tribunal under section 3 (1) under the Land Disputes Tribunal Act.

The foregoing clearly shows that the decision made by the Nambale Land Disputes Tribunal on 2nd August, 2007 and adopted in Busia PMCC. in land case No. 59 of 2007 in relation to Bukhayo/Kisoko/3641 relating to the cancellation of the title, sub division and transfer to a 3rd party was beyond the powers of the tribunal and the application dated 22nd March, 2008 is hereby granted in terms of prayer 1 and 2.

Dated on the 4th day of July, 2013

S. KIBUNJA

JUDGE

BUSIA (K).