



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

JUDICIAL REVIEW NO 2 OF 2013

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE APPLICATION FOR LAND DISPUTES TRIBUNAL ACT

(REPEALED)

AND

IN THE MATTER OF THE LAND REGISTRATION ACT NO 3 OF 2012

AND

**IN THE MATTER OF AN APPLICATION BY FRANCIS ANYIGA LIGONO FOR AN ORDER
OF CERTIORARI**

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

FUNYULA LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

VINCENT WANDERA OGAI.....INTERESTED PARTY

EX-PARTE.....FRANCIS ANYIGA LIGONO

JUDGMENT

The Exparte Applicant, Francis Anyiga Ligono, through Ms. Obwoye Onsongo and Company advocates, filed the notice of motion dated 17/5/2013 for orders of certiorari to call into this Court and quash the award made by Funyula Land Dispute Tribunal and adopted in Busia PMC Land case no. 3 of 2005 on 12/10/2006 and costs. The main ground of the application is that the Tribunal acted beyond its powers by ordering the cancellation of title to registered land and therefore its orders were a nullity. The Interested Party, Vincent Wandera Ogai, opposed the application and filed a replying affidavit sworn on 29th July 2013, asking that the application be dismissed with costs.

When the matter came up for hearing on 26/9/2003, Mr. Onsongo Advocate for the Exparte Applicant and the Interested Party made their submissions. The court has carefully considered the contents of the pleadings, affidavits and submissions made by the parties and find as follows;

1. That from the copy of the Tribunal proceedings in case no. 11 of 2004, it is quite clear that the claim that has been filed by the Interested Party was for a portion of 0.4HA of land from Samia/Wakhungu – Odiado/1485 and parcel Samia/Wakhungu – Odiado/1484. The Tribunal after hearing the parties concerned and their witnesses granted the Interested Party 4 acres of land. It also ordered that the Exparte Applicant should retain 1 acre and that the surveyors be called upon to do the sub-division.
2. That the award was clearly a matter that was beyond the powers granted to the Tribunal under section 3(1) of the Land Dispute Tribunal Act (now repealed) which limited the Tribunal powers to only disputes to do with “division of, or the determination of boundaries to land, including land held in common; a claim to occupy or work land, or trespassed land”.
3. That as shown above, the award of the Tribunal would result to the cancellations of the titles to the registered land while the Tribunal did not have powers to deal with issues or disputes relating to ownership of registered land under the Registered Land Act chapter 300 of the Laws of Kenya (now repealed).

That from the findings above, the decision of the Funyula Land Dispute Tribunal in relation to Land parcel Samia/Wakhungu-Odiado/1484 and 1485 adopted in Busia PMC Land case no 3 of 2005 on 12th October 2006, was without jurisdiction and therefore null and void. The same is therefore called into this court and quashed as prayed for under prayer (a) of the notice of motion dated 17/5/2013. The interested party will meet the costs of this application.

It is so ordered.

S.M KIBUNJA JUDGE

Dated, Delivered and Signed in Busia on this 9TH day of OCTOBER, 2013.

In the presence of;