



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

MISC. CIVIL APP. NO. 86 OF 2011 (JR)

IN THE MATTER OF APPLICATION FOR ORDERS OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT 1990

AND

**IN THE MATTER OF SIAKAGO DIVISION (MBEERE NORTH DISTRICT) LAND DISPUTES
TRIBUNAL CASE NO. 484 OF 2011**

AND

IN THE MATTER OF LAND PARCEL NUMBER THAWA/SIAKAGO/741

BETWEEN

REPUBLIC.....APPLICANT

VERSUS

THE SIAKAGO DIVISION (MBEERE NORTH DISTRICT)

LAND DISPUTES TRIBUNALRESPONDENT

AND

CHRISTOPHER KAUNJU KIRIGO represented by

PETER NJUE NGARI INTERESTED PARTY

R U L I N G

This is the Notice of Motion dated 23/11/2013 which was filed pursuant to leave granted on 15/11/2011. The Exparte Applicant seeks orders of;

1. **Certiorari** and **Prohibition** to quash the undated decision/award/ findings of the Siakago Divisional Land Dispute Tribunal, in Land Dispute Tribunal case No.484/2011 in respect of land parcel No.NTHAWA/SIAKAGO/741 which award was adopted as a Judgment and a decree dated 13th October 2011, issued by Siakago Principal Magistrate's Court in land Dispute Tribunal case

No.33/2011.

2. The Prohibitory Order is to prohibit the Dispute Land Registrar in charge of Mbeere North District and the District surveyor found implementing the decision of the Siakago Divisional Land Dispute Tribunal in Tribunal case No.484/11 which was adopted as a Judgment in Principal Magistrate's Court Siakago Land Tribunal case No.33/11.

His application is supported by the statement of facts, verifying affidavit, proceedings of the Tribunal JBM1, Decree JBM2, Title deed for Nthawa/Siakago/741 JBM3 plus certificate of official search. The interested party filed a Replying affidavit saying him and others were only interested in divisions being done then getting their shares. He said they were not keen on title deeds. He therefore opposed the application. The Respondent was represented by the Honourable the Attorney General. The Attorney General in a letter to the Deputy Registrar and copied to the Exparte Applicant's Counsel concedes to the application.

- There is no dispute that the Exparte Applicant is the absolute proprietor of land No.Nthawa/Siakago/741 (JBM3). There is a certificate of official search annexed herein.
- There is also no dispute that the Siakago Land Disputes Tribunal vide case No.484/11 made a decision involving proprietary rights in this land. They ordered for a subdivision of the said land into two portions. The effect of subdivision is to create new parcels of land with new titles. The interested party cannot say he accepts subdivisions but not new titles. If that were the case then what would be the purpose of the subdivision?.

The jurisdiction of the Land Disputes Tribunals was outlined in section 3 of the now repealed Land Dispute Tribunal Act. By ordering subdivision the Tribunal was cancelling a title and creating other titles. This was ultra vires its mandate. Ref. **WAMWEA –V- CATHOLIC DIOCESE OF MURANGA REGISTERED TRUSTEE (2003) KLR 389**. The Attorney General who is the legal advisor to Government and who represented the Respondents conceded that indeed the Respondent went beyond its powers in issuing the said orders for subdivision, and issuance of new title deeds.

The Land Tribunal also erred in entertaining one Peter Njue Ngari who purported to represent Christopher Kaunju Kirigo when no basis for such representation had been laid.

I therefore find the proceedings at the Land Dispute Tribunal which culminated in a Judgment at the Senior Principal Magistrate's Court Siakago to have been unprocedural, null and void. I allow the application dated 23/11/2011 and grant the orders of Certiorari and Prohibition as prayed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT EMBU THIS 1ST DAY OF OCTOBER 2013.

H.I. ONG'UDI

J U D G E

In the presence of;

M/s Wairimu for Ken Githinji for Interested party

N/A for Respondent

Njue – C/c