



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
JUDICIAL REVIEW 1 OF 2010

REPUBLIC.....APPLICANT

VERSUS

THE HON. THE PRINCIPAL MAGISTRATE SIAYA PRINCIPAL MAGISTRATE’S

COURT.....1ST RESPONDENT

THE CHAIRMAN LANDS DISPUTES TRIBUNAL AT SIAYA.....2ND RESPONDENT

MARTIN OTIENO ADEDE.....INTERESTED PARTY

J U D G M E N T

The applicant’s notice of motion dated 16-2-2012 prays for the following orders:-

(1)This honourable court be pleased to grant an order of certiorari removing into this court the decision of the Land Disputes Tribunal sitting at Siaya in Siaya Land Disputes Case No. 7 of 2009, the date of which delivery is not disclosed or indicated for purposes of being quashed.

(2)This honourable court be pleased to grant the applicant an order of prohibition directed at the 1st respondent prohibiting it from hearing and making further orders in its Siaya Principal Magistrate’s Land Disputes Application No. 87 of 2009 and or thereat adopting the decision or ruling of the Siaya Lands Disputes Tribunal in Land Dispute No. 7 of 2009.

(3)Costs.

The applicant’s case is that he is the registered proprietor of Land parcel **No. Central Alego/Komolo/769**. The tribunal adjudicated on the said parcel of land and arrived at the following decision:-

“The District Land Registrar is herewith ordered to make corrections on land parcels number Central Alego/Komolo/763 and Parcel Number Central Alego/Komolo/ 769 as follows:-

(1)Cancel the name of John Ongola Okola appearing on parcel No. 769 and instead register the names of Martin Otieno Adede on it.

(2)And similarly correct and remove the name of Martin Otieno Adede appearing on land parcel number Komolo/763 and insert the name of John Ongola Okola on it”.

The said decision was filed for adoption at Siaya Principal Magistrate's Court Land Disputes Tribunal Case No. **87 of 2009**. Before the same was adopted the applicant moved to the high court and filed this application.

The applicant's argument is that by virtue of holding the title deed the tribunal had no mandate and jurisdiction to entertain the interested party's claim.

I have equally read the replying affidavit by the interested party sworn on 31-3-2010. I have carefully perused the annexure to the same. There is a possibility that the interested party has a claim over the suit parcels of land by virtue of purchase. There is equally a possibility that there is such confusion on the ground and that he may have built and developed on a wrong parcel of land.

The undated decision of the tribunal however does not permit it to decide on the issue of title. As a matter of fact it had no jurisdiction to decide whether to cancel title or replace the registered owners in whatever format or style.

The powers of the tribunal in the now repealed Land Disputes Tribunal Act No. 18 of 1990 under section 3 (1) thereof were:-

(a)The division of or the determination of boundaries to land including land held in common.

(b)A claim to occupy or work on land or

(c)Trespass to land.

Consequently, I do hold that the tribunal exceeded its mandate.

The next issue raised by the interested party was that the applicant's application was premature. According to him the applicant should have waited till the tribunal award or verdict was adopted as an order of the court.

On this score, I do agree with the interested party. The repealed Act required that the decision of the tribunal be adopted by the court so that it can be enforced. The same strictly speaking becomes a decree and consequently the prevailing party can use it to its desired end.

In the instant case what the applicant decided to quash is simply the decision of the tribunal. The same as it stands cannot be enforced unless it is adopted.

Nonetheless, this court cannot condone an illegality. Even if it is to be adopted the same is inconsequential as it illegal from the word go.

I do in the process allow the notice of motion dated 16-2-2012 with costs.

Dated, signed and delivered at Kisumu this 13th day of July, 2012.

**H.K. CHEMITEI
JUDGE**

In the presence of:

.....for the applicant

.....for the respondents

.....for the interested party

HKC/va