



REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 81 of 2005

IN THE MATTER OF L.R. N.MARAGOLI/KISATIRU/690

AND

IN THE MATTER OF VIHIGA DISTRICT LAND DISPUTE TRIBUNAL CASE NO. 7 OF 2005

BETWEEN

REPUBLIC APPLICANT

AND

JOASH ATIABILA

EZINA BULUKU ODALI

ELISI SAGALA ODALI.....APPLICANTS

VERSUS

THE CHAIRMAN, VIHIGA DISTRICT LAND TRIBUNALRESPONDENT

AND

ELIMA M'MOCHI AMISI INTERESTED PARTY

RULING

The application by way of Notice of Motion dated 18.11.05 seeks orders that the applicants JOASH ATIABILA, EZINA BULUKU ODALI and ELISI SAGALA ODALI be granted an order of CERTIORARI to remove into this court and quash forthwith the decision of Vihiga Land Disputes Tribunal sitting at Sabatia in Case No. 7 of 2005 all other consequential orders thereto in Vihiga Senior Resident Magistrate's Court Misc. Award No. 86 of 2005 in relation to Land Parcel No. **North Maragoli/Kisatiru/690**.

The application was supported by the affidavit of JOASH ATIABILA, the 1st applicant sworn on 26.10.05.

The said JOASH ATIABILA, the 1st applicant and the 2nd applicant, EZINA BULUKU ODALI passed away during the pendency of this suit.

The 3rd applicant, ELISHA SAGALA ODALI swore a further affidavit on 20.11.07.

In the said affidavit, the applicant has averred that the land the subject matter of this case is registered in the name of his late father, BATHELOMAYO ODALI WATIABILA. That no Succession proceedings have been carried out in the estate of the late BATHELOMAYO ODALI WATIABILA. That the Tribunal therefore acted in excess of its jurisdiction.

The application was opposed to as per the replying affidavit by the Interested Party, ELIMA MMOCHI AMISI sworn on 20.3.06. The said Interested Party passed on and was substituted by the consent of the parties by her son, MOHAMED AMISI.

In the said replying affidavit, it is contended that the Land Disputes Tribunal acted within the law. That the late BATHELOMAYO ODALI WATIABILA was registered to hold the land the subject matter herein in trust for his late brother LUMERA's family. The family of the late BATHELOMAYO ODALI WATIABILA is blamed for failing to take out Letters of grant of Administration of his estate. The applicants are also blamed for failing to appeal against the decision of the Land Disputes Tribunal to the Provincial Land Disputes Appeals Committee.

According to the said affidavit, the claim before the Tribunal was on ownership of land and the right to work or occupy land.

The Vihiga District Land Disputes Tribunal made the following decision:-

“ALLIMA MMOCHI AMISI should take the possession of N.MARAGOLI/KISATIRU/690 as prayed and the land registrar is hereby ordered to effect the changes.”

Clearly this is a decision on ownership and transfer of land. The elders acted in excess of jurisdiction contrary to Section 3 (1) of the Land Dispute Tribunals Act No. 18 of 1990 which stipulates as follows:-

“Subject to this Act, all cases of a civil nature involving a dispute as to –

- (a) The division of, or the determination of boundaries to land, including land held in common;***
- (b) A claim to occupy or work land; or***
- (c) Trespass to land.***

Shall be heard and determined by a Tribunal established under section 4.”

The decision of the Tribunal was therefore a nullity. The application is allowed with no orders as to costs. The parties ought to have their dispute arbitrated before the right forum.

Delivered, dated and signed at Kakamega this 7th day of November, 2012

B. THURANIRA JADEN

J U D G E