



REPUBLIC OF KENYA

High Court at Kakamega

Judicial Review 18 of 2012

**IN THE MATTER OF AN APPLICATION BY MATSABA WANGUBA WERE TO APPLY FOR
ORDERS OF JUDICIAL REVIEW**

AND

IN THE MATTER OF SOUTH WANGA LAND DISPUTES TRIBUNAL CASE NO. 4 OF 2008

AND

REPUBLIC.....APPLICANT

AND

THE CHAIRMAN, SOUTH WANGA LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE SENIOR RESIDENT MAGISTRATE'S COURT, MUMIAS.....2ND RESPONDENT

EX-PARTE

MATSABA WANGUBA WERE.....APPLICANT

AND

PIUS NANZALA NANJINIA

PETER WAFUBWA NANJINIA.....INTERESTED PARTIES

PAUL NANJINIA ODUORY

RULING

The application by way of Notice of Motion dated 12.3.12 seeks orders that an order of Certiorari to remove into this Honourable court for purposes of being quashed the decision of South Wanga Land Disputes Tribunal which was read and adopted as judgment of the court on 25th November, 2009 and 29th November 2011 when the Principal Magistrate's court sitting at Mumias confirmed the Award by the Provincial Land Disputes Appeal Tribunal dated 16.2.2011 dismissing the Applicant's Appeal.

The application is supported by the affidavit of **MATSABA WANGUBA WERE** sworn on 12.3.12.

The grounds of the application according to the said affidavit is that the South Wanga Land Disputes

Tribunal acted in excess of its jurisdiction in that the said award conferred proprietary rights to the interested parties over the applicant's **L.R. W/WANGA/BUCHIFI/561** which measures 16.0 acres. That the interested parties are the applicant's neighbours and joint registered owners of **L.R. W/WANGA/BUCHIFI/558** which measures 2.8 acres. The applicant's contention is that their **L.P. W/WANGA/BUCHIFI/561** was not referred to the Tribunal and the award of the Tribunal to re-survey and demarcate the land of the interested parties encroached on his land.

The application is opposed to as per the replying affidavit sworn by the 1st interested party **PIUS NANZALA NANJINIA** on 11.5.12. The Respondent's case according to the said affidavit is that the applicant who was the objector in the case before the Tribunal had trespassed on **L.P. W/WANGA/BUCHIFI/561**. That the Tribunal's finding was that the applicant, **MAUTSABA WANGUBA WERE** admitted encroaching on his part on **L.R. W/WANGA/BUCHIFI/558**. That the applicant's land is 16.0 acres and any resurveying and fixing of the boundary which does not touch on the applicant's 16.0 acres will not cause any prejudice to the applicant. That the proprietary right of the applicant cannot be said to have been breached on if he gives up the 1.8 acres of land that is in excess of his 16.0 acres.

Ateya & Co. Advocates appeared for the applicant while the firm of Makokha Oaka Advocates appeared for the interested parties.

Both parties submitted written submissions.

Section 3 (1) of the Land Disputes Tribunal's Act No. 18 of 1990 sets out the jurisdiction of the Land Disputes Tribunals 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 award of the Tribunal was as follows:-

“.....the SRM's court (Mumias) to direct the District Land Surveyor (to) re-establish the boundary and demarcate L.R. W/WANGA/BUCHIFI/558 to read 2.8 (two point eight) acres as per the title Deed and the map (RIM) and also the official search (search No. 392/08)”

The certified copy of the register for **L.R. W/WANGA/BUCHIFI/561** exhibited by the applicant (annextue “MWWI1”) reflects the approximate area of the applicant's land as 16.0 acres.

The certificate copy of the register of **L.R. W/WANGA/BUCHIFI/558** reflects that the interested parties land is approximately 2.8 acres. The nature of the claim before the Tribunal as can be discerned even from the evidence adduced before the elders was a claim for trespass by destroying and interfering with boundary features. In my view the claim was within the jurisdiction of the Tribunal.

The Tribunal's verdict did not interfere with the proprietary rights of the applicant's 16.0 acres of land. The District Surveyor while carrying out the exercise of re-establishing the boundary should not therefore interfere with the applicant's 16.0 acres of land. Any such interference would be contrary to the orders issued by the Tribunal. If during the re-establishment of the boundary the Interested Parties manage to get their 2.8 acres of land, that would also be in tandem with the Tribunal's decision.

The Provincial Appeals Committee decision was signed on 16.2.11. The confirmation of the said decision

by the court was on the 29th November 2011.

The application to seek leave was therefore within time. However, having arrived at the conclusion that the Tribunal acted within its jurisdiction, the application has no merits and is dismissed.

From the Tribunal's proceedings, it is clear that the parties herein are close family members. Let each party bear their own costs.

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

B. THURANIRA JADEN

JUDGE