



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUSIA

Civil Case 11 of 2007

LIVINGSTONE OUYA.....PLAINTIFF

~VRS~

1. JOHNSTONE APIYO AMAKOYE.....1ST DEFENDANT

2. LUANDA LAND DISPUTES TRIBUNAL.....2ND DEFENDANT

JUDGMENT

The Plaintiff Livingstone Ouya sues the Defendants Johnstone Apiyo amakoye and Luanda Land Disputes Tribunal for a declaratory order that the proceedings and award of the said tribunal as adopted by the Vihiga Principal Magistrate are a nullity and consequently unenforceable. In his plaint dated 30th December 2006, the Plaintiff avers that he is the registered owner of the land parcel No.WEST BUNYORE/EKWANDA/1615 whose unspecified portion was awarded to the 1st Defendant by the tribunal.

The Defendants failed to enter appearance and did not file defence. Interlocutory judgment was entered in favour of the Plaintiff against the Defendants on 25th January 2008. The Plaintiff testified that he became the registered proprietor of Land Reference W. BUNYORE/EKWANDA/1615 in 1974. In the year 2006, the 1st Defendant filed a dispute before Luanda Land Disputes Tribunal claiming half portion of the land. The tribunal in its award gave the 1st Defendant an unspecified portion of the land. The award was adopted as judgment of the court on 18th June 2006 by Principal Magistrate, Vihiga. The Plaintiff stated that there was no sale of land agreement between him and the first Defendant. The act of the tribunal was in excess of its jurisdiction.

The Plaintiff proved through documentary evidence that he is the proprietor of land reference No.W. BUNYORE/EKWANDA/1615 measuring 0.2 hectares. The verdict of the tribunal was that the land be subdivided for Plaintiff to retain 50X100 ft portion while the interested party takes the remaining portion.

The issues to decide herein are whether the tribunal had jurisdiction to hear the dispute and whether the verdict of the tribunal is enforceable. The determination of the two issues will guide the court as to whether the Plaintiff is entitled to the prayers sought.

Section 3 (1) of the Land Disputes Tribunal Act limits the jurisdiction of the tribunal to the following:

“3. (1) 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.

The tribunal had no jurisdiction to hear a dispute where one is claiming title to land whether whole or a portion. The land was registered under the Registered Land Act and only the High Court or the Resident Magistrate’s Court was competent to hear such a dispute guided by the provisions of section 159 of the Registered Land Act. Lack of jurisdiction by the court or tribunal renders the decision *void ab initial*. The decision of Luanda Land Disputes Tribunal in respect of Land Parcel No. W. BUNYORE/EKWANDA/1615 is void for all intents and purposes. Such a decision is not enforceable in law.

It is my finding therefore that, the Plaintiff has established his case on the balance of probabilities. I enter judgment in his favour in terms of paragraph 10 of the plaint. I also award him costs of the suit.

F. N. MUCHEMI

JUDGE

Dated, Delivered and Signed at Busia

This 2nd day of November, 2009 in the presence of Mr. Manwari for plaintiff