



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

IN BUSIA

ENVIRONMENT AND LAND COURT

JUDICIAL REVIEW NO. 20 OF 2011

REPUBLIC.....APPLICANT

= VERSUS =

FUNYULA LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

ANGELINE MUKHETO.....INTERESTED PARTY

CHRISTINE MUGENI OUMA.....EX PARTE APPLICANT

J U D G M E N T

INTRODUCTION

1. This is a judicial review matter instituted on 28th July 2011, by the Ex-parte Applicant – **CHRISTINE MUGENI OUMA** – challenging the decision of the Respondent, the - **FUNYULA LAND DISUTES TRIBUNAL**- that was made in favour of the Interested Party, - **ANGELINE MUKHETO** - on 11th November 2010 and adopted as an order of the Senior Principal Magistrate’s Court at Busia on 20th July 2011.

SYNOPSIS

2. The dispute presented to the Tribunal concerned Land Parcel No. **SAMIA/WAKHUNGU – ODIADO/196** (hereinafter referred to as the “suit property”). The Interested Party had approached the tribunal claiming that the ex-parte Applicant who is her daughter conducted succession proceedings pertaining to the suit property irregularly by excluding her. The tribunal came to the conclusion that succession proceedings had been unlawfully conducted leading to vesting the ownership of the suit property on the wrong next of kin. They then directed that the title deed of the suit property be revoked and freshly registered in the name of the interested party as the next of kin of her husband, the deceased original owner, Musumba Mukhuwa. Being aggrieved by this decision, the Ex-parte Applicant took issue with the Respondent for attempting to cancel a title deed. That is ultra-vires its powers, she argued, and it was also unlawful to purport to revoke a confirmed grant for letters of administration issued by the High Court.

3. The Ex-parte Applicant seeks the following orders:

a. THAT an order of Certiorari be issued to call to the High Court and quash the decision of the Funyula Land Disputes Tribunal over **L. R NO. SAMIA/WAKHUNGU – ODIADO/196** and adopted by the Resident Magistrate’s Court at Busia vide Land Case No. 70 of 2011 on 20th July 2011.

b. THAT costs of the Application be provided for.

4. The Respondent and Interested Party did not file any response to the motion despite being served with the same on various occasions nor did they attend Court on the hearing date. The Ex-Parte Applicant’s case is therefore uncontroverted. The Ex-parte Applicant filed her submissions dated 7th May 2018 on even date.

ANALYSIS & DETERMINATION

5. I have considered the Application herein, the Statement of facts, supporting documents and submissions. The Respondent's mandate was set out in section 3(1) of the Land Disputes Tribunal Act that limits its powers to issues of boundary determination, trespass and claims on occupation of land. Without a doubt, I am convinced that the Respondent acted in excess of its jurisdiction. It had no powers to determine questions of succession proceedings or land ownership. The Interested Party was aware of the succession proceedings and should have ventilated her claim before the High Court.

6. Without much ado therefore, I allow this matter in terms of prayer (a). As regards costs, which is prayer (b), I realise that this is a sensitive case as the Interested Party and Ex-parte Applicant are closely related. By the Ex-parte Applicant's own description, the Interested Party seems to be a rustic rural woman of humble means. I therefore order and direct that each side should bear its own costs. Parties are at liberty to go to a competent forum of their choice to handle their dispute.

Dated, signed and delivered at Busia this 30th day of January, 2019.

A. K. KANIARU

JUDGE

In the Presence of:

Ex-parte Applicant: Present

Respondent: Absent

Interested Party: Absent

Counsel of Ex-parte Applicant: Present

Counsel of Respondent: N/A

Courts Assistant: Nelson Odame