



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC MISC. CASE NO. 6 OF 2019

(FORMERLY HCCC MISC CASE NO. 52 OF 2009)

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR AN ORDER OF CERTIORARI AND PROHIBITION

AND

IN THE MATTER OF SIAYA LAND DISPUTES TRIBUNAL LAND CASE NO. 105 OF 2006 AND SIAYA P.M.C. LAND DISPUTE TRIBUNAL CASE NO. 47 OF 2008

CALEB OSAWO OGOLLA.....APPLICANT

VERSUS

THE LAND DISPUTES TRIBUNAL SIAYA.....1ST RESPONDENT

THE PRINCIPAL MAGISTRATE COURT SIAYA.....RESPONDENT

AND

GEORGE SOLOMON OMONDI.....INTERESTED PARTY

JUDGMENT

1. Caleb Osano Ogolla, the Ex-parte Applicant through the Republic of Kenya filed this Judicial Review proceedings against the Siaya District Land Disputes Tribunal and the Principal Magistrate at Siaya hereinafter referred to as the respondents and Gorge /Solomon Omondi hereinafter referred to as the Interested Party.
2. The Notice of Motion dated 4/4/2009 seeks orders of *Certiorari* to bring into the High Court the claim and decision of Siaya District Land Disputes Tribunal case number 105 of 2006 and Siaya P.M.C Land case number 47 of 2008 for the purposes of being quashed.
3. The application is based on the grounds that decision was arrived at without jurisdiction and therefore ultra vires and that the said was time barred.
4. George Solomon Omondi opposed the application vide affidavit filed on 24/6/2010 where he stated that it is true that the applicant was rightful proprietor of the land with one Julius Ger but changed to name of Ger to be deleted
 4. That the action by the said applicant is unprocedural and hence him being Registered as the sole proprietor is null and void.
 5. That the applicant herein only realized his mistake only to apply for letters of administration in 2007.
 6. That the Siaya Land Disputes Tribunal had the mandate to cancel the said Registration the same having been obtained fraudulently.
 7. That the court at Siaya had the Jurisdiction to adopt the same as judgment of court as mandated under the Land Disputes Tribunals Act 1990.
 8. That the applicant herein came to court with unclean hands aimed at validating an illegality.

9. That we have since challenged his being declared the administrator of JULIUS ELIAKIM GER in succession cause 369/2009 before this court.

10. That the said action was brought to court in time and thus the procedure being proper

11. That if the said orders are granted I will be prejudiced by the said decision as I reside at the part of the said land the same being bestowed b Julius Ger to my father.

12. That the orders sought by the applicant are untenable, an abuse of the court process and or is misconceived and also is brought in bad faith.

5. I have considered the application, affidavit on record and written submissions and do find that the Jurisdiction of the Land District Tribunal as it then was, was premised on **Section 3 of the Land Dispute Tribunal Act** (repealed) which provides as follows:

6. The **Tribunal has no mandate to determine a succession cause.** Succession cause can only be determined by the High Court or Magistrates court with jurisdiction. Likewise, the Land Dispute **Tribunal has no mandate to set aside a determination by any court of law** as it did in this case. Moreover, the **Tribunal had no authority to determine ownership** of land and therefore right to title. Lastly the **Tribunal had no authority to cancel title.**

7. I do find the decision of the Tribunal as nullity having been made ultra vires the provision of **Section 3 (1) of Land Dispute Tribunal Act.**

8. I do grant an order of **Certiorari** quashing the decision of Siaya District Land Disputes Tribunal in case number 105 of 2006 and the decision of the Siaya Principal Magistrates Court in Land Disputes Tribunals case number 47 of 2008.

9. Cost of the Judicial Review to the Exparte Applicant. Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 26TH DAY OF SEPTEMBER, 2019.

In the presence of:

Applicant N/A

Respondents N/A

Interested Party Mr. Odhiambo for interested party

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE