



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENTAL AND LAND COURT AT KISUMU**

**JUDICIAL REVIEW NO. 8 OF 2017**

**IN THE MATTER OF THE BONDO LAND DISPUTE TRIBUNAL ACT 1990**

**AND**

**IN THE MATTER OF SENIOR RESIDENT MAGISTRATE'S COURT BONDO**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**-VERSUS-**

**SENIOR RESIDENT MAGISTRATE COURT,**

**BONDO.....1<sup>ST</sup> RESPONDENT**

**CHAIRMAN BONDO DISTRICT LAND**

**DISPUTE TRIBUNAL.....2<sup>ND</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR BONDO.....3<sup>RD</sup> RESPONDENT**

**AND**

**KHALID OKANDA OWINO.....-INTERESTED PARTY**

**PETER ORWA OWINO.....EX-PARTE APPLICANT**

**JUDGEMENT**

1. Peter Orwa Owino, the Exparte Applicant, sought for leave to apply for the orders of certiorari and prohibition through his chamber summons dated the 28<sup>th</sup> July, 2009. The application was granted through the court's order of 18<sup>th</sup> February, 2010.
2. That the Exparte Applicant then filed the Notice of Motion dated 12<sup>th</sup> March, 2010 and amended on the 23<sup>rd</sup> October, 2017 seeking for orders of certiorari, to move into the court and quash the proceedings of Bondo Land Disputes Tribunal in Tribunal Case No. 15 of 2004 and dated 4<sup>th</sup> May, 2006. He also prays for costs. The application is based on the statement of facts and verifying affidavit filed.
3. That while the application was pending Sophia Okudo Owino, the interested party, passed on and was substituted with Khalid Okanda Owino.
4. That the Attorney General for the three named respondents did not oppose the Exparte Applicant's application.
5. That the Interested Party did not file any replying papers in opposition to the Notice of Motion or the Amended Notice of Motion though served.
6. The following are the issues for the court's determinations;

a. Whether the award of the tribunal was in excess of their jurisdiction.

b. Who pays the costs.

7. The court has carefully considered the grounds on the statement of facts, verifying affidavit, and the documentary evidence in the form of the proceedings of KISUMU C.M Land Case No. 11 of 2009, Siaya Land Disputes Tribunal Land Case No. 15 of 2004 Provincial Land Appeal Committee, Nyanza Province in Land Appeal No. 450 of 2007, and the certificate of official search for Siaya/Omia Mao/1929 and come to the following findings;

a. That the Siaya Land Disputes Tribunal Case and the appeal to Provincial Land Appeal Committee Nyanza Province had been filed by Peter Orwa Owino, the Exparte Applicant against Sophia Okudo Owino, the initial Interested Party. The appeal was against the Tribunal ruling which had dismissed his claim. That the appeals committee decision to dismiss the appeal does not in any way confer any rights over the land in dispute that did not exist before the tribunal decision.

b. That the Exparte Applicant is the one who had initiated a claim for land against the Interested Party in the Land Dispute Tribunal which did not have jurisdiction. He thereafter filed an appeal to the Provincial Appeals committee which also did not have legal authority or jurisdiction to hear and determine a claim over registered land under **Section 3 (1)** of the Land Disputes Tribunal Chapter 303 A of Laws of Kenya, which has since been repealed, and Section 159 of the Registered Land Act Chapter 300 of Laws of Kenya, also since repealed. That as the decision of the Tribunal and the Appeals Committee were to dismiss the Exparte Applicant's claim and appeal respectively, his legal option to challenge the decision was through a second appeal to this court or its predecessor, the High Court, in accordance with **Section 8** of the Land Disputes Act.

c. That the cause taken by the Exparte Applicant of pursuing for judicial review order, instead of a second appeal, is the wrong option. That this is because even if the court was to quash the decision of the Provincial Appeals Committee to dismiss his appeal, the court does not have the jurisdiction to substitute that decision with its own in judicial review proceedings. This is because the proceedings only deals with the process rather than the merit of the decision. That put in another way, the quashing of the Tribunal or Provincial Appeals Committee decision would not confer any legal rights on the Exparte Applicant or the Interested Party that was not already in existence.

d. That in any case what the Exparte Applicant should have sought to quash or challenge is the Provincial Appeals Committee decision and not the Land Disputes Tribunal decision.

8. That in view of the foregoing, and even though the respondents did not oppose the Notice of Motion and the Interested Party did not participate in its hearing, the court do not find any merit in the application and the same is dismissed with no orders as to costs.

Order accordingly.

**S. M. KIBUNJA**

**ENVIRONMENT & LAND - JUDGE**

**DATED AND DELIVERED THIS 5<sup>TH</sup> DAY OF DECEMBER, 2018.**

In presence of;

Exparte Applicant Present

Respondents Absent

Interested Party Absent

Counsel Absent

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**