



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC MISC APP NO. 72 OF 2015**

**IN THE MATTER OF: AN APPLICATION BY COSMAS NZIVO NGOMBO FOR ORDER OF CERTIORARI AND PROHIBITION.**

**AND**

**IN THE MATTER OF: THE CABINET SECRETARY MINISTER OF LANDS**

**AND**

**IN THE MATTER OF: LAND DISPUTES TRIBUNAL AT CHONYI/BEDZOMBO/KITSOENI 796 BY THE CHAIRMAN (DEPUTY COUNTY COMMISSIONER)**

**AND**

**IN THE MATTER OF: CHONYI/BEDZOMBO/KITSOENI LAND DISPUTES TRIBUNAL UNDER THE LAND ADJUDICATION ACT (CAP 29) LAWS OF KENYA**

**AND**

**REPUBLIC.....APPLICANT**

**=VERSUS=**

**1. CABINET SECRETARY LAND,HOUSING & URBAN DEVELOPMENT**

**2. DISTRICT SURVEYOR, KILIFI**

**3. REGISTRAR OF LANDS, KILIFI**

**4. HONORABLE ATTORNEY GENERAL.....RESPONDENTS**

**AND**

**COSMAS NZIVO NGOMBO (*as administrator of the Estate of***

**NGOMBO NZIVO JEMBE (deceased).....EXPARTE APPLICANT**

**AND**

**R U L I N G**

1. In the Notice of Motion dated 14<sup>th</sup> December, 2015, the Ex-parte Applicant is seeking for the following orders:-

**(a) THAT there be an order of certiorari to remove into this court and quash the decision of the Cabinet Secretary Lands, Housing & Urban Development in Appeals to the Minister case Bedzombo/Kitsoeni Adjudication No. 84 of 2009, Kilifi in relation to property being CHONYI/BEDZOMBO/KITSOENI/796.**

**(b) THAT there be an order of prohibition, prohibiting the 2<sup>nd</sup>, and 3<sup>rd</sup> Respondents by themselves, their agents, and/or officers from implementing and or effecting the decision of the Cabinet Secretary Lands, Housing & Urban Development in Appeal to the Minister case Bedzombo/Kitsoeni Adjudication No. 84 of 2009, Kilifi in relation to the property being Chonyi Bedzombo/Kitsoeni/796.**

**(c) THAT the costs of this application be provided for.**

2. In his Affidavit, the Applicant has deponed that he is the legal representative of his father's estate who owned 1/5<sup>th</sup> share in the suit property.

3. It is the Applicant's case that the 1<sup>st</sup> Respondent was aware that the title was issued to some proprietors on 30<sup>th</sup> October, 2007 during which time no appeal was preferred until July, 2015; that the 1<sup>st</sup> Respondent had no jurisdiction to arbitrate over the matter and that the Respondents have colluded to circumvent the law by issuing illegal findings.

4. The Respondents' counsel filed Grounds of Opposition in which he averred that the Applicant at the hearing admitted having committed an offence of perjury; that the decision of the Land Adjudication Committee was procured by deceit and that the decision of the Minister was reasonable.

5. The Interested Party did not file any response to the Application.

6. The Applicant's advocate relied on the Supporting Affidavit.

7. The Applicant has annexed the proceedings of the Land Adjudication Officer dated 26<sup>th</sup> May, 2005.

8. According to those proceedings, the Land Adjudication Officer dismissed the Objection that had been raised by the Interested Party in respect to the adjudication of the suit property pursuant to the provisions of the Land Adjudication Act.

9. In his Ruling of 26<sup>th</sup> May, 2005, the Land Adjudication Officer found as follows:-

**“Objection dismissed. Plot NO. 796 to remain in the name of the Defendant(s) as recorded in the Adjudication Register. I hereby order that any person who is aggrieved by the above state decision is hereby given sixty (60) days starting from today to file appeal to the Minister.”**

10. There is no evidence to show that the Interested Party filed an appeal before the Minister within 60 days.

11. Indeed, the proceedings that have been annexed on the Applicant's Affidavit shows that the Interested

Party purported to file Appeal No. 84 of 2008 which was heard by the Minister's nominee on an unknown date(s).

12. In his undated Judgment, the Minister purported to over turn the decision of the Land Adjudication Officer by holding that parcel of land number 796 should be subdivided into two portions and the Interested Party (Appellant) to be issued with a new number.

13. The Minister's decision was not only irregular, but also illegal because by the time he was purporting to make his orders, a Title Deed had already been issued to the five people as per the decision of the Land Adjudication Officer.

14. Having failed to file an appeal within 60 days, the Interested Party could not file an appeal in the year 2009, and more so considering that the title deed in respect of the suit property had been issued on 30<sup>th</sup> October, 2007 thus rendering the Minister functus officio in the proceedings.

15. In the circumstances, and for the reasons I have given above, I find and hold that the Minister did not have jurisdiction to deal with the issues in respect of the suit property after the issuance of the title deed to the Applicant and the other co-owners.

16. For those reasons, I allow the Notice of Motion dated 14<sup>th</sup> December, 2015 as follows:-

**(a) An order of certiorari be and is hereby issued to remove into this court and quash the decision of the Cabinet Secretary Lands, Housing & Urban Development in Appeals to the Minister Case No. 84 of 2009, Kilifi in relation to parcel of land known as CHONYI/BEDZOMBO/KITSOENI/796.**

**(b) An order of prohibition be and is hereby issued prohibiting the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents by themselves, their agents and or officers from implementing and or effecting the decision of the Cabinet Secretary Lands, Housing & Urban Development in Appeal to the Minister Case Bedzombo/Kitsoeni Adjudication No. 84 of 2009, Kilifi in relation to parcel of land number CHONYI/BEDZOMBO/KITSOENI/798.**

**(c) The Respondents to pay the costs of the suit.**

**Dated, signed and delivered in Malindi this 3<sup>rd</sup> day of February, 2017.**

**O. A. Angote**

**Judge**