



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA IN BUSIA
LAND & ENVIRONMENTAL DIVISION
MISC. APPLICATION J. R. NO. 12 OF 2008

REPUBLIC APPLICANT

VERSUS

BUTULA LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

ALEXANDER OKELLO OKAYA..... 2ND RESPONDENT

R U L I N G

1. The application before me is a Notice of Motion dated 5/5/2016 and filed on the same date. It is brought under Section 1A, 1B, 3A, 3B and 38 of Civil Procedure Act (Cap 21), Order 22 Rule 29, Order 51 of Civil Procedure Rules, 2010, and all enabling provisions of law. The Exparte Applicant – PETER OJWANG TSIMBIKO – feels cheated and/or shortchanged by the Interested Party – ALEXANDER OKELLO OKAYA – over ownership of Land parcel No. MARACHI/ESIKOMA/2211.

2. The Exparte Applicant is asking for the following prayers in the application:

Prayer 1: That the Interested Party be compelled to restore to the Exparte Applicant a portion of land measuring 0.52Ha now comprised in title No. MARACHI/ESIKOMA/2211 so as to give effect and actualize the decree herein.

Prayer 2: That the Interested Party do meet the consequential cost of sub-dividing his title No. MARACHI/ESIKOMA/2211 and excising therefrom a portion of land measuring 0.52Ha and transferring and registering the same in Exparte Applicant's name.

Prayer 3: That the Interested Party do execute all necessary documents to effect (1) and (2) above in default of which the executive officer or any authorized officer of the Court to execute the same on his behalf.

Prayer 4: That there be leave to apply.

Prayer 5: That the costs of this application be provided for.

3. From the grounds advanced, it emerged that there is a decree whose actualization the Interested Party frustrated by refusing or failing to surrender a portion of land measuring 0.52Ha previously comprised in Land parcel No. MARACHI/ESIKOMA/1631.

4. The supporting affidavit accompanying the application shows, *inter alia*, that the Exparte Applicant owned parcel No.1631 which was a sub-division from the original parcel No. MARACHI/ESIKOMA/320. Both the Interested Party and Exparte Applicant disputed over the ownership of parcel No. 1631 before the now defunct Butula Land Disputes Tribunal. The Interested Party won and was awarded the Land. The decision of the tribunal was then adopted as judgement of the Lower Court here in Land Dispute No. 48 of 2008.

5. The Exparte Applicant then challenged the decision of the tribunal and the Court in this judicial review. The court did not hear the matter; parties instead compromised it by entering a consent order dated 26/1/2012. By that consent, an order of CERTIORARI was granted quashing the decision of the tribunal and court. That same order was essentially what the judicial review application was seeking.

6. It is pointed out in the supporting affidavit that the effect of the consent was to return the Status Quo to the state in which it was before the Land Disputes Tribunal's case was filed. And the Status was that the Exparte Applicant owned parcel No.1631.

7. As pointed out earlier, parcel No. 1631 was derived from a sub-division of the original parcel No. 320. The other Land parcel so derived was parcel No. 1630. The tribunal's decision was to the effect that titles to Land parcels Nos 1630 and 1631 had to be nullified so that the land could revert to its original No. 320.

8. It appears clear that the Interested Party went ahead surreptitiously and effected the order of the tribunal. The land reverted to parcel No. 320. He then subdivided parcel No. 320 into three resultant parcel Nos 2211, 2212 and 2213. He retained ownership of parcel No. 2211 while transferring the other two to other parties. The Exparte Applicant is now only interested in parcel No. 2211 owned by the Interested Party. He wants his own portion excised from there at Interested Party's costs.

9. The application was agreed to be canvassed by way of written submissions but Ipapu for Interested Party opted not to file submissions. I need to observe also that there is also no response from the Interested Party to the application.

10. The submissions of the Exparte Applicant were filed on 10/1/2017. By and Large, the submissions reiterate and/or amplify the background and history that I have already highlighted here. It is clear that the Interested Party was trying to be too clever by half. He was openly consenting to an arrangement that ensured that the Exparte Applicant got back his land while at the same time stealthily frustrating that eventuality by sub-dividing the land into several different parcels. In all this, one sees clear attempt to change the identity of the land. The obvious aim was to defeat the Interest of the Exparte Applicant.

11. But the Interested Party failed to reckon with the fact that justice reaches far and exposes hidden things. In this matter, it is not difficult to discern that he changed parcel No. 1630 and 1631 into one parcel No. 320 before subdividing parcel No.320 into parcels Nos 2211, 2212 and 2213. Now his own parcel is No. 2211 and the interest of the Exparte Applicant must be deemed to be in that parcel.

12. As I have already pointed out, the application is not submitted on by the Interested Party. It is also not responded to. It is clear that the Interested Party was trying to circumvent the law. The Court finds the application herein meritorious. It is therefore allowed and prayers 1, 2, and 3 are granted. Costs in the cause.

Dated, signed and delivered at Busia this 19th day of July, 2017.

A. K. KANIARU

JUDGE

In the Presence of:

Exparte Applicant:

1st Respondent

2nd Respondent