



REPUBLIC OF KENYA

ELC AT MIGORI

JUDICIAL REVIEW NO. 14 OF 2017

(Formerly Nairobi HC Misc Application 564 of 2007 & Kisii ELC NO. 2 OF 2015)

THE CHAIRMAN LAND DISPUTES TRIBUNAL –URIRI DIVISION

MIGORI DISTRICT.....RESPONDENT

AND

DANIEL ONYANGO OBILA.....INTERESTED PARTY/RESPONDENT

AND

RICHARD OLOO OKETCH.....EXPARTE

AND

CHARLES OKINYI OLOO.....APPLICANT

(Suing as Legal Rep. of the estate of Richard Oloo Oketch – Deceased)

**JUDGMENT**

1. The instant application by way of Notice of Motion dated 14<sup>th</sup> June 2017 was filed pursuant to leave granted by court on 29/5/2007. It is brought under Order LIII Rules 3, 4 and 5 of the Civil Procedure Rules and Sections 8 & 9 of the Law Reform Act Cap 26 Laws of Kenya.

2. The Ex-parte applicant namely CHARLES OKINYI OLOO (Hereinafter referred to as the applicant) is represented by counsel Omonde Kiseru. He is seeking the followings orders :-

***“(a) That the Honourable Court be pleased to grant an Order of Certiorari to remove and bring the High Court for purposes of quashing the award / observation of Uiri Division Land Disputes Tribunal of Migori District which award was adopted as a Decree by Principal Magistrate’s Court Migori on 24<sup>th</sup> April 2007 vide Miscellaneous Application Number 7 of 2007. The said award / observation was made in the said Tribunals case No. 006 of 2006; (DANIEL ONYANGO OBILA versus RICHARD OLOO OKETCH) which award /observation awarded 3.2 Hectares of the Applicant’s parcel of Land number KANYAMKAGO/KAJULU/882 to the Interested Party.***

***(b) That this Honourable Court be pleased to grant an Order of Prohibition directed against the Distict Land Registrar Migori Prohibiting him from implementing the consequent Decree dated 24<sup>th</sup> April 2007 vide Migori Principal Magistrate’s Court Miscellaneous Application No. 7 of 2007.***

***(c) That the costs of this application be borne by the Interested Party.***

***(d) Any other further Order as the Court may deem fit and just.”***

3. The application is supported by an affidavit of five (5) paragraphs sworn on 18<sup>th</sup> June 2007 by the applicant. He relied on the grounds including the following:-

**(a) The said award / consequent Decree is null and void because:-**

**(i) Leave was granted on 29<sup>th</sup> May, 2007.**

**(ii) The Respondent's Tribunal is non existent in law as Act No. 18 of 1990 does not create a Divisional Land Disputes Tribunal like the respondent's tribunal rather same creates a District land Disputes Tribunal for every Registration District.**

**(iii) The Respondent's Tribunal acted in excess of Jurisdiction in a purported arbitration which was expressly statute barred by Act Number 22 Laws of Kenya and Section 13 (2) of Act No. 18 of 1990.**

**(Vii) The Rule of natural justice to be implied in the regime of Act No. 18 of 1990 and formulated in De-Souza versus Chairman and Members of Tanga Town Council (19612) E. A. 377 were violated in that:-**

**(a) The Tribunal was improperly constituted contrary to the Provision of Section 4 of Act No. 18 of 1990.**

**(b) The Respondent Tribunal acted mala fides. The object of the purported arbitration was to award the Interested Party 3.2 Hectares of the Applicant's Land.**

**(c) The Respondent's Tribunal blatantly failed to appreciate that parcels of Land numbers KANYAMKAGO/KAJULU / 881 and 882 are registered titles with definite boundaries hence help of Land Registrar and surveyor were necessary to ascertain the boundaries thereof."**

4. The interested party herein namely **DANIEL ONYANGO OBILO** was initially represented by Chepkwony Okuche Advocates and currently by T.O.N. Kemunto Advocate. He filed a replying affidavit of eighteen paragraphs sworn on 24/8/2007 in opposition to the Notice of Motion application. This party stated, among other things, that the dispute relates to illegal appropriation of seven acres of land in lieu of the agreed portion of land by the applicant. Therefore, the respondent tribunal had jurisdiction to hear and determine the claim and that the Rules of justice as formulated in **De-Souza case (Ibid)** were adhered to the letter. In support of the reply, he attached a document marked DOO1 being proceedings and ruling of Migori District Land Dispute Tribunal-Uriri Division .

5. The Respondent entered no appearance herein. He did not filed any response to this application.

6. On 26<sup>th</sup> June 2015, Samson Okongo J sitting at Kisii Environment and Land Court (ELC), granted leave to the applicant to amend his Notice of Motion application dated 23<sup>rd</sup> January 2015 for a stay of execution of it's ex-parte order dated 8<sup>th</sup> March 2012 dismissing the application, setting aside of the dismissal order and reinstatement of the application. On 23<sup>rd</sup> July 2015, the court allowed the amended Notice of Motion dated 28<sup>th</sup> May 2015 with costs to the interested party.

7. On 4<sup>th</sup> November, 2015, John.M. Mutungi J sitting at Kisii ELC directed the parties to argue the Notice of Motion application by way of written submissions in consonant with **Order 51 Rule 16 Civil Procedure Rules, 2010**. The suit was transferred to this court on 28/3/2017 for determination.

8. Mr. Omonde Kisera counsel for the applicant filed submissions dated 2/12/2015. He urged this court to grant the prayers in the Notice of Motion dated 14/6/2007. He submitted as summarized hereunder:

a. The award and the consequent Judgment /decree were made and issued without jurisdiction. He relied on Section 3 of the then Land Disputes Tribunals Act No. 18 of 1990 and case of **Desai Vs. Warsama (1967) EA 351**.

b. The registration of the applicant as the owner of the suit land being a first registration could not be affected howsoever even by reasons of fraud. He referred to the tribunal's purported jurisdiction to award the interested party 3.2 hectares out of the applicant's land.

c. The interested party had no locus standi to prosecute the matter as he is not the legal representative of his late father.

9. On 10/12/2015, the applicant's counsel served the counsel for the interested party's with written submissions. There was no response or filing of submissions by counsel for the interested party thus the matter proceeded accordingly.

10. I have carefully studied the entire Notice of Motion application, the replying affidavit sworn on 24/8/2007 by the interested party and submissions dated 3/12/2015 by the applicant's counsel. The main issues for determination are :-

a. The decision made by Land Disputes Tribunal Uriri Division, Migori District.

b. The existence and jurisdiction of the tribunal.

c. Is the applicant entitled to the reliefs or prayers sought herein?

d. The essence of fair hearing.

11. I consider the decision in form of an award made by Migori District Land Dispute Tribunal- Uriri Division on 9/11/2006 in case No. 006/2006. It is in respect of L.R. NO. Kanyamkago/Kajulu/882 (the suit land). The tribunal members present were five (5) who delivered a ruling thereof. The ruling reads:

**“The tribunal rules that the disputed portion should be subdivided as follows;**

**Complainant get 3.2 ha while objector get 4.0 ha.”**

12. The **Land Disputes Tribunals Act No. 18 of 1990 Chapter 303A Laws of Kenya** {now repealed by the ELC Act 2015 (2012)}, established and limited the jurisdiction of a tribunal established thereunder. **Section 3 (1) of the repealed Act** provided as follows;

***Subject to this Act, all cases of a civil nature involving a dispute as to-***

***a. the division of, or determination of boundaries to land, including land held in common;***

***b. a claim to occupy or work land, or***

proceedings and it is the basis on which the relief sought can be granted. In **Kotut** case (Supra),the court observed, inter alia;

***“..... In addition, it has inherent powers to prevent oppressive and vexatious use of its proceedings or abuse of its process whether contemplated or real and that the inherent powers to do so are neither by virtue of the Constitution or Statute. They are there are because the court must always function as a court of law and must at all times have the ability to do justice in all situations. A court has inherent powers to prevent abuse of its process and to safeguard the right of a fair hearing.”*** (emphasis provided)

21. In the case of **Manyasi-vs-. Gicheru and 3 others (2009) KLR 68**, the court referred to many authorities cited by counsel. It then summarized them in the words of Lord Reid in **Ridge Vs. Baldwin (1964) AC 40** thus;-

**“ a decision given without observing the principles of natural justice is void.”**

22. In the result, I find that the Applicant satisfied the court that the proceedings and award/ruling shall be quashed forthwith on their removal into this court.The proceedings and ruling is null and void and cant lie.

23. I accordingly grant the applicant orders a and b sought herein with no order as to costs.

**DELIVERED, SIGNED and DATED in open court at MIGOR I this 19<sup>th</sup> .day of July.2017.**

**G.M.A. ONGONDO**

**JUDGE**