



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

MISC APP. CASE NO. 47 OF 2011

**IN THE MATTER OF AN APPLICATION BY JOSEPH LEO OCHIENG ANG LUKE
ODUOLOMOLO FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF LAND PARCEL NUMBERSIAYA/KARAPUL RAMBA/318

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990

BETWEEN

REPUBLICAPPLICANT

EX PARTE:

JOSEPH LE OCHIENG

LUKE ODUOL OMOLO.....EX PARTE

VERSUS

**THE CHAIRMAN NYANZA PROVINCIAL APPEALS COMMITTEE.....1ST
RESPONDENT**

**THE PRINCIPLE MAGISTRATE COURT AT SIAYA.....2ND
RESPONDENT**

**THE DISTRICT LAND REGISTRAR, SIAYA DISTRICT.....3RD
RESPONDENT**

**THE ATTORNEY GENERAL.....4TH
RESPONDENT**

AND

ALOICE WERE PAMBO.....1ST INTERESTED

PARTY

**JOHN AYIMBA PAMBO.....2ND INTERESTED
PARTY**

JUDGMENT

1. Joseph Leo Ochieng and Luke Oduol Omolo, the Exparte Applicants, filed the notice of motion dated 24th October 2011 seeking for certiorari orders to remove into this court and quash the proceedings in Principal Magistrate's court at Siaya Land Dispute Tribunal case No.10 of 2004, Nyanza Provincial Appeals Committee case No..110 of 2004 dated 14th July 2011 and **District Land Disputes Tribunal case No.SYA/92/2001**. The Applicants also prays for prohibition order against the Land Registrar Siaya, against cancelling the Exparte Applicants title to land parcel **Siaya Karapul Ramba/318**. The application is based on the statement of fact and verifying affidavit filed on 18th October 2011 raising the following grounds among others;

- a) That no formal claim had been lodged as required under Section 3(2) of the then Land disputes Tribunal Act No.18 of 1990.
- b) That no formal claim was served on the Exparte Applicant before setting the claim down for hearing.
- c) The Appeals Committee was improperly constituted contrary to **Section 9 of the Act** and their award was therefore defective abinitio.
- d) The Tribunal acted ultra vires its powers in disregard of **Section 159 of the Registered Land Act Chapter 300 of Laws of Kenya**, now repealed.

2. Aloice Were Pambo and John Ayimba Pambo, the interested parties, opposed the notice of motion through the grounds of opposition dated 14th March 2013 on the following four grounds:

- a) That the application is devoid of merit, frivolous and vexatious.
- b) That the application is incompetent and bad in law.
- c) That the tribunal's decision was proper and lawful.
- d) That there are no grounds for granting the orders sought.

3. The Exparte Applicants named the Chairman, Nyanza Provincial Appeals Committee, Principal Magistrate Court Siaya, District Land Registrar, Siaya and the Attorney General as the Respondents and their counsel conceded to the notice of motion when the matter came up on 20th April 2016. The Exparte Applicants filed written submissions dated 22nd July 2015 while that of the Interested Parties filed theirs dated 16th March 2016.

4.The issue for determination are as follows:

- a) Whether the Exparte Applicant was granted a fair hearing.
- b) Whether the dispute lodged by the interested Parties was within those set out under **Section 3(1) of the Land Disputes Tribunal Act**.
- c) Whether the Tribunal's decision was ultra vires its Jurisdiction
- d) Whether the Appeals committee was properly constituted.

5. The court has carefully considered the grounds on the statement of facts, verifying affidavit, grounds of opposition, submissions by both counsel and come to the following conclusions;

a) That from the proceedings of the Nyanza Provincial Appeals Committee the panel that heard the appeal consisted of one Chairman, two members and one Secretary, making a total of four people. The Provision of Section 9(2) of Land Disputes Tribunal Act sets the Appeals Committee membership to be three. The Appeals Committee that handled the appeal herein was improperly constituted as it had four members.

b) That the land in disputes **Siaya/Karapul Ramba/318** was registered land having been first registered on 14th May 1987. The title deed to the land was issued to the Exparte Applicants on 14th March 1988.

c) That the record from the Appeals Committee shows clearly that the dispute was about ownership of the land in dispute. That allowed tribunals to deal with disputes relating to the division of, or determination of boundaries to land, including land held in common, a claim to occupy or work land, and trespass to land. The claim before the Siaya Land Dispute Tribunal and the Nyanza Appeals Committee in this case did not fall on of the areas set out under **Section 3(1) of the Act**. The dispute was about the legality or otherwise of the process through which the Exparte Applicants acquired ownership of the land. The tribunal decision had the effect of invalidating the transaction through which the Exparte Applicants got registered with the suit land which was beyond the powers of the tribunal their decision, which was upheld by the Appeals Committee, was therefore ultra vires and hence null and void abinitio.

d) That the Exparte Applicants claim that they were not accorded a fair hearing was not proved as the proceedings before the Siaya Lands Disputes Tribunal was not available to confirm whether or they were not accorded the opportunity to respond to the Interested Parties claim.

6. That having found as above the Exparte Applicants notice of motion dated 24th October 2011 is allowed in terms of prayers (a) and (b). the Interested Parties will pay the costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 31ST DAY OF MAY 2016

In presence of;

Exparte Applicants Absent

Respondents Absent

Interested parties Absent

Counsels Mr Oriaro for Exparte Applicants

Mr Baganda for Kowino for Interested Parties.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

31/5/2016

31/5/2016

S.M. Kibunja J

Oyugi court assistant

Parties absent

Mr Baganda for Kowino for Interested Parties

Mr Oriaro for Exparte Applicant

Court: Judgment delivered in open court in presence of Mr Oriaro for Exparte Applicant and Mr Baganda for Kowino for Interested Parties.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

31/5/2016