



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

JUDICIAL REVIEW NO.49 OF 2012

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT

AND

IN THE MATTER OF AN APPLICATION BY ELIAKIM ODERA OTUOMA FOR ORDERS OF

CERTIORARI AND PROHIBITION

BETWEEN

JAPHETH OTIENO ODERA (SUING ON BEHALF OF HIS FATHER ELIAKIM ODERA
OTUOMA.....APPLICANT

VERSUS

SIAYA DISTRICT LAND TRIBUNAL.....1ST
RESPONDENT

LAND REGISTRAR SIAYA.....2ND
RESPONDENT

AND

RICHARD RANGAR RANGARINTERESTED
PARTY

JUDGMENT

1. Japheth Otieno Odera, the Exparte Applicant, filed the notice of motion dated 20th November 2012 seeking for the following;

- a) an order of certiorari to call into this court and quash the Siaya District Land Disputes Tribunal award in respect of **Siaya/Nyajuok/1658**.
- b) an order of mandamus for Siaya Land Registrar to register land parcel **Siaya/Nyajuok/1658** in the names of the Exparte Applicant's father, **Eliakim Odera Otuoma**.

c) Costs.

The Exparte Applicant had earlier filed the Chamber Summons dated 19th October 2012 for leave which was granted on 29th October 2012. The **Siaya District Land Dispute Tribunal** and **Land Registrar Siaya** were named as the 1st and 2nd Respondents respectively, while **Richard Rangar Rangar** was named as the Interested Party.

2. The Interested Party filed the memo of appearance dated 24.01.2013 through P.D. Onyango and Company Advocates. He also filed a replying affidavit sworn on 12th February 2013.
3. The notice of motion came up for hearing on 28th April 2016 and the Exparte Applicant relied on the contents of the affidavit and the other documents he had filed. The Respondents and Interested Party did not attend court.
4. The following are the issues for the court's determination;
 - a) Whether the Siaya Land disputes Tribunal award in SYA/55/2010 in respect of **Siaya/Nyajuok/1658** was beyond its jurisdiction.
 - b) Whether the Exparte Applicant was a party in the tribunal proceedings and if so, whether he was accorded fair hearing.
 - c) Whether the orders sought should be granted.
 - d) Who pays the costs.
5. The court has carefully considered the notice of motion, the verifying affidavit statement of facts, the replying affidavit, the Exparte Applicant's oral submissions and come to the following findings;
 - a) That Siaya Land Disputes Tribunal case number **SYA/55/2010** was filed by **Richard Rangar Rangar** against **Eliakim Odera Otuma**. That both parties were given the opportunity to present their case as seen in the copy of the tribunal proceedings availed by the Exparte Applicant.
 - b) That the Exparte Applicant, not having been a party to the proceedings, could only have appeared as a witness of one of the parties. That the Exparte Applicant has not availed any evidence to show that he was meant to be a witness of one of the parties and that the Tribunal declined to hear him.
 - c) That an analysis of the evidence given by **Richard Rangar Rangar**, the claimant, in the Tribunal case shows that his prayer was for the Tribunal to assist him remove **Elikim Odera Otuoma**, the Objector, from the land. The objector's defence was that the land belonged to him and therefore should not be evicted.
 - d) That the Tribunal's award of 7th July 2010, was for the objector, **Eliakim Odera Otuoma**, to give **Richard Rangar Rangar**, the claimant, vacant possession of the land with effect of end of August 2010. That though land parcel **Siaya/Nyajuok/1658** was registered land, having been first registered on 28th August 1990 in the names of **Okelo Obado** and later transferred to **Richard Rangar Rangar** on 6th May 1994, the Tribunal award did not amount to conferring title or cancelling title to the said land. That the award was therefore within the powers of the Tribunal in view of the provision of **Section 3(1) (c)** of the Land Disputes Tribunal Act, now repealed.
 - e) That even though the Exparte Applicant, **Japheth Otieno Odera** obtained limited Grant of letters of Administration Ad litem in Kisumu **High Court Probate and Administration cause No.545 of 2012** on 20th September 2012, the copy of the register he availed shows that the suit land has never been registered in the names of his late father, **Eliakim Odera Otuoma**. That the suit land is therefore not yet part of the estate of the late **Eliakim Odera Otuoma**.

) That the copy of the certificate of death No.000758 availed by the Exparte Applicant shows that **Eliakim Odera Otuoma** died on 24th July 2010. That the notice of motion dated 20th November 2012 at the heading indicates the

" **Applicant**" as **Eliakim Odera Otuoma** and is also the one shown as the one who drew and filed the notice of motion. That the said **Eliakim Odera Otuoma**, having died on 24th July 2010, could not have been the one who drew and filed the notice of motion dated and filed in court on 20th November 2012.

f) That the said **Eliakim Odera Otuoma** had not obtained leave to file a notice of motion for judicial review orders as provided for under **Order 53 Rule 2 of the Civil Procedure Rules**. The notice of motion dated 20th November 2012 is therefore improperly before the court.

g) That though **Japheth Otieno Odera**, the Exparte Applicant, obtained leave to file a notice of motion for judicial review orders on 29th October 2012, there is no such application filed to date for this court's consideration.

h) That for reasons set out above, the prayers sought by the Exparte Applicant cannot be issued. That ideally, the court would have left the matter at that, but in view of the provisions of **Article 159 of the Constitution**, it is important to address the legality or otherwise of the process through which the Interested Party got registered with the suit land. This will ensure that justice is not delayed, and is administered without undue regard to procedural technicalities.

i. That from the Siaya Land Dispute Tribunal proceedings and the copy of the register for land parcel **Siaya/Nyajuok/1658**, the Interested Party got registered as proprietor of the suit land on 6th May 1994 through transfer ostensibly from the previous owner. That the copy of the certificate of death No.148169 availed by the Exparte Applicant shows that **Richard Okelo Obado**, who the court takes to be the same person named **Okelo Obado** in the register of the said parcel of land died on 20th April 1986. That the family of late **Okelo Obado** is reportedly the one that decided to have the land inherited by the Interested Party in 1994 during the burial ceremony of one of their cousins. That the said **Okelo Obado** could not have been the one who executed the transfer documents through which the Interested Party acquired proprietorship of the suit land as he had died about eight years before the transfer.

j) That the family of the late **Okelo Obado**, the interested Party and or any other person Interested with the estate of the said **Okelo Obado** were obligated to move the Succession court in accordance with the provisions of the **Law of Succession Act Chapter 160 of Laws of Kenya** to inherit or distribute the land parcel **Siaya/Nyajuok/1658** through transmission. That there is no evidence adduced to confirm that the interested Party acquired title to the said land through a succession cause proceedings and the transfer of the suit land from **Okelo Obado** to the **Interested Party** must have been done without following the laid down procedure and would amount to interfering with the property of a deceased person under **Section 45 of the Law of Succession Act**. The Interested Party's title to the said land is therefore not protected under **Section 26 of the Land Registration Act No.3 of 2012**.

2. That in view of the foregoing the court issues the following orders:

a) That the notice of motion dated 20th November 2012 is without merit and is dismissed with costs.

b) That the transfer of land parcel **Siaya/Nyajuok/1658** from the names of **Okelo Obado**, deceased, to **Richard Rangar Rangar** on 6th May 1994 was done without adhering to the **Law of Succession Act** and the title is not protected under **Section 26 of the Land Registration Act No.3 of 2012**.

c) That the Land Registrar Siaya, is hereby directed to cancel the entries number 2 and 3 in respect of land parcel **Siaya/Nyajuok/1658** and revert the land to **Okelo Obado**(deceased) to be dealt with

in accordance with the provisions of the **Law of Succession Act** Chapter 160 of Laws of Kenya.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 22ND DAY JUNE 2016

In presence of;

Ex Parte Applicant Present

Respondents Absent

Interested Party Absent

Counsel N/A

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

22/6/2016

22/6/2016

S.M. Kibunja J

Oyugi Court Assistant

Exparte Applicant present

Mr Odeny for the Applicant

Court: Judgment read over in presence of the Exparte Applicant.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

22/6/2016