



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**MISC. APPL CASE NO.33 OF 2012 (judicial review)**

**IN THE MATTER OF AN APPLICATION BY WILLIAM ROMAN MC TOUGH**

**FOR LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW IN**

**THE NATURE CERTIORARI & PROHIBITION**

**AND**

**IN THE MATTER OF THE KISUMU EAST DISTRICT LANDS DISPUTE TRIBUNAL**

**AND**

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT 1990**

**WILLIAM ROMAN MC TOUGH .....EX PARTE APPLICANT**

**VERSUS**

**KISUMU EAST DISTRICT LANDS DISPUTE TRIBUNAL.....RESPONDENT**

**EDWINA ANYANGO AYIEKO.....INTERESTED PARTY**

**BERNARD O. NGITI .....INTERESTED PARTY**

**JUDGMENT**

1. **William Roman Mc Tough**, the Exparte Applicant, vide notice of motion dated 29<sup>th</sup> June 2012, seeks for an order of certiorari to bring to this court, and quash the decision of **Kisumu East District Land Disputes Tribunal**, the Respondent, in case number **24 of 2011** in respect of land parcel **Kisumu/Nyaliera/2053**. The application is based on the three grounds on its face being that he is the registered proprietor of the said land, that the decision of the tribunal to take away his title to the land and give it to the Interested Party was beyond its powers and that it infringed on his constitutional rights.
2. The notice of motion is opposed by **Edwina Anyango Ayieko** and **Bernard O. Ngiti**, the Interested Parties through the replying affidavit of **Bernard O. Ngiti** sworn on 6<sup>th</sup> November 2012 and further affidavit sworn on 17<sup>th</sup> February 2014.
3. The Respondent also opposed the application through the grounds of opposition dated 24<sup>th</sup> September

2013.

4. The application came up for hearing on 22<sup>nd</sup> June 2016 when Mr Odeny, learned counsel for the Exparte Applicant and both Interested Parties made their rival verbal submissions. Mr. Nyauma learned counsel for the respondent, conceded to the notice of motion but prayed that no orders on costs should be made against the Respondent.

5. The issues for determination are as follows:

- a) Whether the tribunal award was ultra vires their jurisdiction.
- b) Whether the tribunal award should be quashed.
- c) Who pays the costs?

6. The court has considered the grounds on the notice of motion, statement, affidavit evidence, rival oral submissions and come to the following determinations;

a) That the Interested Parties herein were the ones who lodged a complaint with Kisumu east district Land disputes Tribunal in case number 24 of 2011 over land parcel **Kisumu/Nyaliera/1253** against the Exparte Applicant and another.

b) That the tribunal proceedings show the hearing commenced on 3<sup>rd</sup> June 2011 and the award or ruling was delivered on 13<sup>th</sup> September 2011. That the Land Disputes Tribunals had been created under the **Land Disputes Tribunal Act No.18 of 1990** which was repealed under **Section 31 of the Environment and Land Court Act No.19 of 2011** which has a commencement date of 30<sup>th</sup> August 2011. That as the Kisumu East district Land disputes Tribunal ceased to exist on 30<sup>th</sup> August 2011, then the decision or award made and dated 13<sup>th</sup> September 2011 was made by a tribunal that did not exist in law and therefore null and void as it had not been saved in the transition provision of **Section 30 of the Environment and Land Court Act**.

c) That the land disputes tribunal powers or jurisdiction was as set out or limited under **Section 3(1) of the Land Disputes Tribunal Act** (repealed). The power or jurisdiction did not include conferring or taking away title to registered land. That the testimony of the 1<sup>st</sup> Interested Party before the tribunal shows that she was after the title to the suit land which had been registered in the names of the Exparte Applicant and which she claimed belonged to her late husband. That the tribunal award number 2 and 5 if implemented or executed would take the title to the suit land from the Exparte Applicant and transfer it to the 1<sup>st</sup> Interested Party. That award was beyond the powers or jurisdiction of the tribunal (Respondent).

d) That even if the tribunal was still in existence by the time it made its award on 13<sup>th</sup> September 2011, the decision was ultra vires their jurisdiction and therefore null and void.

e) That the fact that the tribunal's award is void does not mean that the Interested Parties are estopped from pursuing their interest over the suit land in any other legal forum in accordance with the law. That this court's decision in these proceedings is not on the merit of the evidence presented before the tribunal but on the process only.

f) That having found as above the court finds that the notice of motion dated 29<sup>th</sup> June 2012 has merit and that the Exparte Applicant has established his case on a balance of probabilities and that the court issues the following orders:

- a) That the decision of **Kisumu East District Land Disputes Tribunal** in respect of Land parcel **Kisumu/ Nyaliera/1253 in case number 24 of 2011** is hereby called into this court

and quashed for being ultra vires the jurisdiction of the tribunal.

b) That each of the parties do bear their own costs.

It is so ordered.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

DATED AND DELIVERED THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2016

In presence of;

Exparte Applicant      Absent

Respondent              Absent

Interested parties      Present

Counsel                  M/S Masese for Exparte Applicant.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**21/9/2016**

21/9/2016

S.M. Kibunja J.

Oyugi court assistant

M/S Masese for Exparte Applicant.

Court: The judgment dated and delivered in open court in presence of both Interested Parties and M/S Masese for Exparte Applicant.

**S .M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**21/9/2016**