



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
JUDICIAL REVIEW CASE NO.43 OF 2012
IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
ORDERS OF CERTIORARI
AND
IN THE MATTER OF PROVISIONS OF THE LAND DISPUTE ACT NO.18 OF 1990
AND
IN THE MATTER OF SIAYA LAND DISPUTES
TRIBUNAL CASE NO.91 OF 2010 AND SIAYA LAND
CASE NUMBER 46 OF 2011

VINCENT OTIENO ODAWA -VS- JOHN OTIENO OKAKA

REPUBLICAPPLICANT

VERSUS

THE PRINCIPAL MAGISTRATE SIAYA.....1ST RESPONDENT

SIAYA LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

AND

VINCENT OTIENO ODAWAINTERESTED PARTY

EX-PARTE

JOHN OTIENO OKAKA.....SUBJECT

ROSE ATIENO OTIENOSUBJECT

J U D G M E N T

1. John Otieno Okaka and Rose Atieno Otieno, the Exparte Applicants, obtained leave to file the substantive application for judicial review orders on 21st August 2012. They were directed to file their application within 21 days and they did so by filing the notice of motion dated 10th September 2012 on

the 11th September 2012. They seek for the following:

- a) An order of certiorari to call into the court and quash the Siaya Land Disputes Tribunal award in case No.91 of 2010.
- b) Costs.

2. The Exparte Applicants set out four grounds on the notice of motion summarized as follows;

- a) That the Land Disputes Tribunal Act has since been repealed.
- b) That the Tribunal exceeded its powers by deciding ownership of registered land and hence their award was void.
- c) That the registered proprietor of the suit land, subject matter of the dispute, was not a party to the tribunal proceedings and the award divested her of her property without a hearing.

3. The notice of motion listed **Vincent Otieno Odawa** as the Interested Party and he filed a notice to Act in person dated 24th April 2013. Thereafter M/S S.O. Madialo & Co, Advocates filed a notice of appointment of advocate on behalf of the Interested Party dated 16th May 2013 on the 27th May 2013.

4. The notice of motion came up for hearing on 30th May 2016. Mr Nyauma for the **Principal Magistrate Siaya** and **Siaya Land Disputes Tribunal**, the Respondents, indicated that they were conceding to the application with no orders as to costs. M/S Onyango for Madialo for the Interested Party sought for time to allow the substitution of **Rose Atieno Otieno**, the 2nd Exparte Applicant. Mr Amondi for the Exparte Applicants submitted that their notice of motion was not opposed and should be allowed.

5. The following are the issues for the court's consideration;

- a) Whether the Siaya Land disputes Tribunal exceeded their powers as alleged.
- b) Whether the Exparte Applicants were given a fair hearing.
- c) Who pays the costs.

6. The court has carefully considered the grounds on the notice of motion, the statement of facts, the affidavit verifying facts and the annexures thereto and come to the following conclusions:

- a) That the power of the Land Disputes Tribunal was as limited under **Section 3(1) of the Land Disputes Tribunal Act No.18 of 1990**. The tribunals had the power to decide on the division of, or the determination of boundaries to land, including land held in common, a claim to occupy or work land, or trespass to land.
- b) That the Land disputes Tribunal Act was repealed on 30th August 2011 under **Section 31** of the Environment and Land Court Act No.19 of 2011.
- c) That a reading of the proceedings of Siaya Land Disputes Tribunal **Case No.91 of 2010** clearly shows that the claim **Vincent Otieno Odawa** (Interested Party) had lodged against **John Otieno Okaka** (1st Exparte Applicant) was based on a sale of land agreement and was seeking specific performance orders. The Tribunal went ahead to order that the 1st Exparte applicant do transfer to the Interested Party the land parcel **Central Alego/Komollo/2041**.

That was inspite of the fact that the Interested Party had in his evidence disclosed that the 1st Exparte Applicant had transferred the land to **Rose Atieno Otieno** who was not a party to the proceedings.

d) That the Tribunal did not have the powers to cancel title or confer title to registered land as that was ultra vires their jurisdiction in view of **Section 3(1)** of the Land Disputes Tribunal Act.

e) That the Tribunal also failed to ensure the registered proprietor was given the opportunity to be heard in accordance with the rules of natural justice and

Article 50 of the Constitution 2010 before making an award that divested her of her proprietary interests to the land.

7. That flowing from the foregoing the court finds that the Exparte Applicant's notice of motion dated 10th September 2012 has merit and is allowed in the following terms:

a) That an order of certiorari is hereby issued calling into this court and quashing the **Siaya Land Disputes Tribunal award in Case No.91 of 2010 in respect of Central Alego/Komollo/2041.**

b) That the Interested Party will pay the Exparte Applicants costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

DATED AND DELIVERED THIS 28TH DAY OF JULY 2016

In presence of;

EX PARTE APPLICANTS Absent

RESPONDENTS Absent

INTERESTED PARTY absent

Counsel Mr Anyumba for Amondi for Exparte Applicant and M/S Kyamazima

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/7/2016

28/7/2010

S.M. KIBUNJA J.

Oyugi court Assistant

M/S Kyamasima for Interested party

Mr Anyumbas for Amondi for Exparte Applicant

Court: Judgment delivered in open court in presence of Mr Anyumba for Amondi for Exparte Applicant and m/S Kyamazima for Interested party.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

28/7/2016