



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
OF KISII

Miscellaneous Civil Application 5 of 2008

**IN THE MATTER OF AN APPLICATION BY EBEL ODAGO ONYANGO FOR LEAVE TO APPLY
FOR JUDICIAL REVIEW (CERTIORARI AND PROHIBITION)**

AND

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

AND

IN THE MATTER OF RONGO LAND DISPUTES TRIBUNALS

AND

IN THE MATTER OF RESIDENT MAGISTRATE'S COURT AT RONGO

BETWEEN

ABEL ODAGO ONYANGO APPLICANT

VERSUS

PAUL ODERA OKODE INTERESTED PARTY/RESPONDENT

AND

RONGO LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE RESIDENT MAGISTRATE'S COURT,

RONGO 2ND RESPONDENT

RULING

The ex-parte applicant prayed for an order of Certiorari to remove into this court for purpose of quashing the decision of the 1st respondent that was delivered on/or about 10th August, 2006. The 1st respondent awarded the applicants parcel of land, **L.R. No. Kamagambo/Kanyimach/787**, hereinafter referred to as the **“the suit land”** or a portion thereof to the interested party herein, Paul Odera Okode. The applicant also prayed for an order of Prohibition directed against the 2nd respondent prohibiting her from hearing, determining and/or enforcing the decision of the 1st respondent.

The application was made on the grounds that:

- **The 1st respondent acted in excess of its jurisdiction in awarding the suit land to the interested party.**

- **The decision of the 1st respondent was *ultra vires* the mandatory provisions of section 6 of the**

Land Control Act.

The 1st respondent acted ultra vires its jurisdiction as set out under section 3 (1) of the Land Disputes Tribunal Act.

- That the 1st respondent dealt with a matter that was pending before the High Court at Kisii.**

The ex-parte applicant, in his affidavit in support of the application, deposed that he is the registered proprietor of the suit land. Sometimes in the year 2006, the interested party commenced proceedings against the applicant claiming the suit land or a portion thereof. The 1st respondent awarded the whole of the suit land to the interested party.

It is clear that the 1st respondent exceeded its jurisdiction as donated to it by the provisions of **section 3 (1) of the Land Disputes Tribunals Act**. In making the aforesaid decision, the Tribunal was in effect nullifying the applicant's title deed and the tribunal had no power to do so.

It is also clear that at the time of giving the said award there was a case pending before this court in relation to the suit land, the same being **HCCC No. 3 of 2000**.

None of the respondents herein opposed the aforesaid application. I am satisfied that the orders sought by the ex-parte applicant are merited and I grant the same. The 1st respondent shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT KISII THIS 10TH DAY OF DECEMBER, 2009.

D. MUSINGA

JUDGE.

10/12/2009

Before D. Musinga, J.

Mobisa – cc

Mr. Mboya for the Applicant

N/A for the Respondent

Court: Ruling delivered in open court on 10th December, 2009.

D. MUSINGA

JUDGE.



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