



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISC. APPL. NO. 74 OF 2013

**IN THE MATTER OF AN APPLICATION BY VINCENT MULOOSI & SINDANI MULOOSI
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI**

AND

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

AND

IN THE MATTER OF THE MALAKISI LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF LAW REFORM ACT CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF CIVIL PROCEDURE ACT CAP 21 RULES OF LAWS OF KENYA

AND

**IN THE MATTER OF BUNGOMA CHIEF MAGISTRATE'S COURT AWARD NO. LDT. NO. 25
OF 2005**

BETWEEN

REPUBLIC.....1ST RESPONDENT

VERSUS

THE CHAIRMAN MALAKISI LAND DISPUTES TRIBUNAL.....2ND RESPONDENT

EXPARTE

1. VINCENT MULOOSI

2. SINDANI MULOOSI APPLICANTS

AND

JOTHAM WEPUKHULU INTERESTED PARTY

JUDGMENT

1. The ex parte applicant vide a notice of motion dated 21st March 2013 asks this court to issue an order of certiorari to remove into this court and quash the decision of the Malakisi Land Disputes tribunal which was read and adopted as a judgment of the court on 23.1.13 by the Bungoma Chief Magistrate's court in land case no. 25 of 2005. The notice of motion is supported by the grounds on the face of it and an affidavit sworn by Vincent Muloosi – the ex parte applicant. One of the grounds raised is that the Malakisi Land Disputes tribunal lacked jurisdiction to entertain and or determine the claim. Secondly the Malakisi Land Disputes tribunal had no powers to entertain a claim that was time barred under the Limitations of Actions Act and section 13 (3) of the Land Disputes Tribunal Act.

2. The A.G. who was served on behalf of the respondents filed a notice of appointment on 18th July 2013 but failed to file any documents to oppose the motion. The interested party was also served on diverse dates with the motion and dates when the same was listed for hearing. The Interested Party did not respond to any of the notices served on him and has therefore not opposed the motion dated 21st March 2013. However in-spite of the application not being opposed, it is prudent that it is determined on its merits.

3. The summary of the tribunal's award was to the effect that the ex parte applicants, Kanywinywi and Matendekeye Sindani had to move out of the shaded part to make the whole of L.R. 616 belong to Jotham Wepukhulu – the interested party. According to the proceedings the shaded part comprises L.R. nos S.MALAKISI/MWALIYE/679 and 680 which in the elders view the numbers appeared after the death of Sibi Lufwarula-deceased. It seems the dispute revolved around a claim of trespass and or encroachment on parcel no. 616. The other possible claim is of inheritance rights (succession) whereby the interested party was claiming his deceased father's land. The result of the elders' award if executed would amount to eviction of the ex parte applicants and cancellation of title numbers L.R. 679 and 680 which numbers in the elders' view appeared after the death of Lufwarula.

5. Under the powers donated by section 3 (1) of the Land Disputes Tribunal Act, there is none included that gives the tribunal capacity to make orders that result in eviction and/or cancellation of title deeds. It follows therefore that the tribunal in reaching that award exceeded its mandate it did not have jurisdiction to hear and determine the type of the case before it. Consequently, I do find on this basis that the notice of motion seeking to quash the said decision is merited and is thus allowed. Since neither the respondent nor the interested party filed documents to oppose it, I make an order that each party to bear its own costs.

Dated and Delivered in Bungoma this day of 30th Sept. 2014.

A. OMOLLO

JUDGE