



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT BUNGOMA**

**MISC. APPLICATION NO.189 OF 2010**

**IN THE MATTER OF AN APPLICATION BY FRANCIS WAKHURA MARANGO,  
VINCENT KEYARI MARANGO AND JESTIMORE MUKHEBI MARANGO**

**FOR ORDERS OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT CHAPTER 300 LAWS OF KENYA**

**AND**

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

**AND**

**IN THE MATTER OF THE KANDUYI LAND DISPUTES TRIBUNAL CASE NO. 6 OF 2010,  
CHIEF MAGISTRATE'S COURT AT BUNGOMA L.D.T CASE NO. 36 OF 2010 AND TITLE  
NUMBERS EAST BUKUSU/NORTH SANG'ALO/1135, 1136 AND 1137**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE ACT CHAPTER 21 LAWS OF KENYA**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT CHAPTER 26 LAWS OF KENYA**

**BETWEEN**

**REPUBLIC..... APPLICANT**

**VERSUS**

**THE CHAIRMAN KANDUYI LAND DISPUTES TRIBUNAL .....  
RESPONDENT**

**EX- PARTE**

**FRANCIS WAKHURA MARANGO**

VINCENT KEYARI MARANGO

JESTIMORE MUKHEBI MARANGO ..... APPLICANTS

VERSUS

TOM WASIKE KHAEMBA..... INTERESTED  
PARTY

JUDGMENT

1. The notice of motion dated 10<sup>th</sup> December 2010 filed by the exparte applicants seeking judicial review orders to the effect that the honourable court be pleased to issue orders of certiorari to move to this court and quash the decision of the Kanduyi Land Disputes Tribunal Case No 6 of 2010 read and adopted as judgment of the court on 18<sup>th</sup> August 2010 vide Bungoma CMC Land case no. 36 of 2010. The applicant also prayed for costs to be borne by the interested party.

2. The motion is based on the grounds on the face of it inter alia that the tribunal had no jurisdiction to arbitrate over registered land. Secondly the tribunal exceeded its jurisdiction to order for survey and subdivision of the suit parcels and also that the tribunal heard a matter that was statute barred. The motion is also premised on the affidavits and statements executed by exparte applicants.

3. The land Disputes Tribunal award which irked the exparte applicants read thus;

**“1. The claimant Tom Wasike Khaemba has his natural right to claim back his father's grave yard regardless of it being surveyed and mapped out in the names of the objectors during land adjudication in 1966 to parcel nos. E. Bukusu/N. Sangalo/1137/1136/1135.**

**2. Through serious survey and observation, the panel of elders has found out that the map produced by both parties decries and contradicts the claim of the claimant by not crossing the pathway leading from Makotelo to Kisuluni.**

**3. Enclosed are CI's and OB's exhibits.**

**4. The aggrieved party has thirty days right of appeal.”**

4. It is apparent from the reading of this award that the objectors (exparte applicants) were first registered owners of the suit parcels as early as 1966. The respondent filed grounds of opposition through the Attorney General's office. In it, the respondent avers there was no error in law committed by the Land Disputes Tribunal in adjudicating upon a claim to occupy land as it was empowered by sections 28 and 159 of the Registered Land Act to apply customary law which they properly did in their proceedings. Further that the claim was not statute barred as the exparte applicants actions constituted continued trespass. The interested party did not file any document to challenge the motion.

5. I have considered the pleadings as filed, the respective submissions in line with parameters for issuing judicial review orders. In the sections of the Registered Land Act (*repealed*) cited by the respondents, first section 28 refers to the rights of a proprietor which shall not be defeated except only as provided in the Act and part (b) refers to the rights being defeated by the overriding interests under section 30. Section 159 relates to jurisdiction of courts which also grants the tribunal Jurisdiction but limits that jurisdiction as set out in section 3 (1) of the Land Disputes Act.

6. Taking into account the limb of submissions by the respondent as regards provisions of section 28 (b) of Registered Land Act (*repealed*) which introduces section 30 of the same Act, I do agree with that line of submission that a claim to occupy land under customary trust as an overriding interest cannot be statute barred. However I do not agree on the limb that establishing that trust is a matter that can be handled/ adjudicated on by the Land Disputes Tribunal. The interested party may have had a genuine

claim but the forum which he chose to resolve it lacked such mandate.

7. Therefore it follows that the tribunal exceeded its jurisdiction as donated by section 3 (1) of the Land Disputes Tribunal in hearing and determining the issue of customary trust. This case thus falls within the category where judicial review orders ought to be issued. I do find that the Land Disputes Tribunal exceeded its mandate in this matter and the award issued was issued in excess of that jurisdiction. See case of **Beatrice M'marete vs. R & 3 others [2004] e KLR**. Consequently, I call into this court the decision and award of the Land Disputes Tribunal in land case no. 6 of 2010 which was read and adopted as order of the court in Bungoma CMC land case no. 36 of 2010 on 18<sup>th</sup> August 2010 and do hereby quash it. The prayer (a) of the motion is thus allowed as presented.

8. Since the motion was partly defended, I award half costs to the exparte applicants to be paid by the Attorney General. These shall be the orders of the court.

**DATED, SIGNED and DELIVERED** at Bungoma this 17th day of September 2014.

**A. OMOLLO**

**JUDGE**