



**REPUBLIC OF KENYA**

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

**MISC. CIVIL APPLICATION NO. 48 OF 2010**

**IN THE MATTER OF AN APPLICATION BY MARKO LIUVA MAHINDU FOR ORDERS OF JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE HAMISI DISTRICT LAND DISPUTES TRIBUNAL CLAIM NO. 16 OF 2010 IN RESPECT OF LAND PARCEL NO. L.R. TIRIKI/BULUKHOB/1497**

**AND**

**IN THE MATTER OF THE HAMISI RESIDENT MAGISTRATE'S COURT MISC. CIVIL CASE NO. 18 OF 2010 – TIMONA IHAJI VERSUS MARKO LIUVA MAHINDU**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA AND THE LAND DISPUTES TRIBUNAL ACT (NO. 18 OF 1990)**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE HAMISI DISTRICT LAND DISPUTES TRIBUNAL .....  
RESPONDENT**

**EX-PARTE: MARKO LIUVA MAHINDU**

**R U L I N G**

The **Notice of Motion** dated 24/12/2010 seeks an order of *certiorari* to remove into the High Court for the purposes of being quashed the decision made by **Hamisi District Land Disputes Tribunal** on 4/9/2010 in **claim No. 16 of 2010** and filed in the **Resident Magistrate's Court at Hamisi** as **Misc. Civil Case No. 18 of 2010 – Timona Ihaji vs Marko Liuva Mahindu**. The application is supported by the statutory statement and verifying affidavit by the *ex-parte* applicant, **Marko Liuva Mahindu**(hereinafter referred to as the applicant).

The grounds upon which the relief is sought is that the Tribunal had no jurisdiction in entertaining the dispute.

The application was opposed to by the Interested Party, **Timona Ihaji**. The Interested Party's contention is that although the applicant is the registered owner of the land, she is the one in actual possession and occupation of the land and the Tribunal had no jurisdiction to entertain the claim.

An analysis of the decision before the Tribunal reflects that it dealt with matters of sale of land, fraud and nullification of title to land.

The decision was outside the mandate of the Tribunal as provided for under **Section 3(1)** of the **Land Disputes Tribunals Act** which stipulates as follows:-

**3. (1) Subject to this Act, all cases of civil nature involving a dispute as to-**

- a. **the division of, or the determination of boundaries to land, including land held in common;**
- b. **a claim to occupy or work land; or**
- c. **trespass to land,**

**shall be heard and determined by a Tribunal established under section 4.**

The Tribunal had no jurisdiction to entertain the dispute. Consequently, the application is allowed. Each party to meet own costs.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Kakamega this 27<sup>th</sup> day of February 2013.

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**SAID J. CHITEMBWE**

**JUDGE**