



**REPUBLIC OF KENYA**

**High Court at Bungoma**

**Miscellaneous Application 128 of 2010**

**REPUBLIC  
AND**

THE CHAIRMAN KIMILILI LAND DISPUTES TRIBUNAL.....RESPONDENT

VERSUS

SIMON WAKHUNGU MASIKA .....APPLICANT

**RULING**

The ex parte applicant in a notice of motion dated 29<sup>th</sup> April 2011 seeks orders of certiorari to remove into this court and quash the decision of Kimilili Land Disputes Tribunal read and adopted as an order of the court on 13<sup>th</sup> July 2010 vide Kimilili land case No. 14 of 2010. He also asks for costs of the application.

The brief background of the ex parte applicant's complaint is that the tribunal acted in excess of jurisdiction as provided under Sec. 3 of the Land Disputes Tribunal, he stated that he is the registered owner of land parcel No. **Kimilili/Kamukuywa/884** by virtue of letters of administration granted to him in respect of his deceased father's estate. This land borders **Kimilili/Kamukuywa/885** which is owned by the respondent. The gist of his case is that the interested party had planted blue gum on the boundary between the two parcels which in his view was not a boundary but a portion of land parcel No. **Kimilili/Kamukuywa/884**.

The interested party has opposed the application on two grounds as can be deduced from the affidavit in reply. That it is the applicant who filed a complaint before the tribunal and therefore cannot turn around to say the tribunal had no jurisdiction to determine the matter. It is second ground in paragraph 5 of the replying affidavit is that the complaint before the tribunal was a boundary dispute between the two land parcels No. 884 and 885 which the tribunal had jurisdiction to determine.

In arguing the application, counsels for both parties filed their respective submissions in support of their case. I have perused the pleadings as well as the written submission filed by the parties. This court's role is only to determine whether the tribunal acted in excess of its jurisdiction given by law hence quash the decision.

It is settled both in case law and statute law that the judicial review application does not question the merit of an award but only the process of reaching the award if it conforms with set standards in order 53 rule 7 and the supreme court practice rules 1997 vol. 53/1-14/6. The jurisdiction of the land disputes tribunal is derived under sections 3 (1) of the Act No. 18 of 1990.

From the proceedings of the tribunal attached to the supporting affidavit of the ex parte applicant, it is clear the dispute was regarding the extent of boundary between the two plots. What the ex parte applicant is not happy with is the findings of the tribunal which was not in his favour. However this court does not go into the merit or otherwise of the award.

Determination of boundaries is/was vested in the tribunal and therefore I find that they had jurisdiction to hear the complaint before them as regards the boundaries between land parcel No. **Kimilili/Kamukuywa/884 and 885**.

On the issue raised by the interested party that the applicant cannot turn around and say the tribunal does not have jurisdiction after it filed a complaint before court is not correct. Had I found that the tribunal

acted in excess of jurisdiction then I would still have quashed the decision because what is null ab *initio* does not become legal merely by a party participating in the proceedings.

I thus disallow the ex parte applicant's motion as failing to meet the threshold for the orders of certiorari to be granted. The costs are awarded to the interested party.

**RULING DATED, SIGNED, READ AND DELIVERED** in open court this 7<sup>th</sup> day of February 2013.

**A. OMOLLO**

**JUDGE.**