



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Judicial Review 17 of 2011**

**REPUBLIC THROUGH**

**JOHN LUCHESI SHIKALI ..... APPLICANT**

**V E R S U S**

**HAMISI DISTRICT LAND DISPUTES TRIBUNAL ..... 1<sup>ST</sup> RESPONDENT**

**THE SENIOR RESIDENT MAGISTRATE'S COURT HAMISI ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**SIPIA KHANG'AI AKUI ..... INTERESTED PARTY**

**R U L I N G**

The ex-parte applicant is seeking orders certiorari to remove into this court the award made by the Hamisi Land Disputes Tribunal and the subsequent proceedings being Miscellaneous Civil Application number 24 of 2010 before the Hamisi Senior Resident Magistrate's Court and have them quashed. The applicant relies on the application and written submissions by his counsel while counsel for the interested party relies on the replying affidavit sworn on 5<sup>th</sup> September 2011.

The interested party filed her claim before the Hamisi Land Disputes Tribunal, vide case number 19 of 2010. She claimed a share of land plot number TIRIKI/SEREM/231. Her evidence before the Tribunal was that the applicant is her step brother. They share the same father. Her late mother was the 1<sup>st</sup> wife and she had four daughters. Upon the death of her mother, their father got married to the applicant's mother. Her father died in 1960 when the applicant was still young. Her claim was that she is entitled to a portion of the land as she heard the applicant was selling of the land.

The applicant's evidence before the Tribunal was that he was born in 1957. His father died in 1960. The interested party went to live in Mombasa and got married. When adjudication was done between 1971/1972, he was the only one at home and was registered as the proprietor of the land.

The title deed annexed by the applicant shows that it was opened on 17.6.1976 and the applicant was the first registered owner. The Tribunal held that the interested party is a beneficiary of the land. The Tribunal further held that the court should nullify the title deed so as to accommodate the interested party.

Counsel for the applicant submitted that the Tribunal lacked jurisdiction to determine the dispute. The Tribunal treated the applicant as an administrator of his father's estate yet he is the first

registered owner. Further, it is contended that the claim is time barred, the award is vague and not capable of implementation and that even the interested party does not support the Tribunal's verdict as per her replying affidavit.

In her replying affidavit, the interested party avers that her claim before the Tribunal was for a share of the suit land. She did not ask for the cancellation of the title. The applicant is her brother and he has a duty to keep her on the land.

**Section 3** of the now repealed Act No. 18 of 1990 provides for jurisdiction of the Land Disputes Tribunal. Under the above section the jurisdiction is limited to:-

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

- a) the division of or the determination boundaries to a 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.”**

From the above provisions, the Tribunal is not empowered to deal with issues of succession or trust. The Tribunals were also empowered to cancel registered titles. However, the tribunals had jurisdiction to determine disputes relating to a claim to occupy or work on land. I have read the “Decision and determination of the Tribunal” as well as the “Tribunal Ruling”. The decision is more of an advice than a final determination. The ruling simply states that “the plaintiff is awarded the case.”

Given the fact that the applicant is the registered owner and the effect of the award would be to nullify or cancel his title deed, I do grant the application for an order of certiorari as prayed. I do further find that the interested party should be allowed to occupy and work on the land and the quashing of the proceedings of the Hamisi Land Disputes Tribunal should not be a license to evict the interested party from the land. There is no evidence that the applicant bought the land he does acknowledge that he was registered as the proprietor as he was the one at home. The applicant is advised that he is better off accommodating his step sister.

In the end, the application dated 2<sup>nd</sup> May 2011 is granted in terms of prayer one (1). However, I do order that the interested party herein is at liberty to occupy part of the land unless evicted by an order of the court. Each party to meet his/her own costs.

***Delivered, dated and signed at Kakamega this 7<sup>th</sup> day of February, 2013***

**SAID J. CHITEMBWE  
J U D G E**