



**REPUBLIC OF KENYA**

**High Court at Meru**

**Judicial Review 91 of 2009**

**LYDIAH MWITIABI M'MUNYUA.....APPLICANT**

**VERSUS**

**MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL.....RESPONDENT**

**NAFTALY MBAABU M'MUNYUA.....INTERESTED PARTY**

**RULING**

The exparte applicant pursuant to Order LII Rule 1(3) of the Civil Procedure Rules issued Notice to Registrar dated 21<sup>st</sup> November, 2009 and the same was served to the Deputy Registrar Meru on 25<sup>th</sup> November, 2009 who acknowledged receipt.

The applicant filed Chamber Summons dated 30<sup>th</sup> November, 2009 seeking leave to apply for an order of certiorari to remove to this court the decision of Meru Central District Land Disputes Tribunal case No.36 of 2009 and filed in Meru CMC LDT Case NO.63 of 2009 for the purpose of being quashed. The exparte applicant sought leave so granted to operate as stay. In the Chamber Summons the exparte applicant had annexed verifying affidavit with annextures thereto and statement of facts. That on 2<sup>nd</sup> December, 2009 Court granted leave to the applicant to apply for prerogative orders of certiorari. The exparte applicant filed Notice of Motion on 15<sup>th</sup> December, 2009 seeking that court do issue an order of certiorari to remove to this court and quash the decision of Meru Central District Land Disputes Tribunal Case No.36 of 2009 dated 11<sup>th</sup> September 2009 and filed in Meru CMCC LDT 63 of 2009. The exparte applicant also sought costs of the application. The Notice of Motion was served upon the respondent on 29<sup>th</sup> December, 2009 and the interested party on 6<sup>th</sup> January, 2010 as per Affidavit of service by one Geoffrey Mburugu M'Mukiri dated 8<sup>th</sup> January, 2010.

The Interested Party appointed the firm of M/S Elijah K. Ogoti & Co. who filed Notice of Appointment of Advocates on 26<sup>th</sup> April, 2010. The respondent did not file any papers. The court record show that on 26<sup>th</sup> April, 2010 Mr. Rimita, learned Advoate appeared for the exparte applicant, Mr. Kimathi, learned Advocate, held brief for Mr. Maroro, learned State Counsel for the respondent and Mr. Elijah Ogoti, learned Advoate appeared for the Interested Party, when the Notice of Motion was adjourned. That on 10<sup>th</sup> May, 2012, the parties respective Advocates appeared before Hon. Mr. Justice Muga Apondi as he then was, when matter was adjourned and set down for mention on 19<sup>th</sup> June, 2012.

That on 19<sup>th</sup> June, 2012 all parties attended court and the matter was adjourned to 16<sup>th</sup> July, 2002. That on 16<sup>th</sup> July, 2012 the matter was once again adjourned and parties granted 30 days leave to file the

relevant affidavits. That on 20<sup>th</sup> September, 2012 the respondent and the interested party had not filed their reply to Notice of Motion hence court set down the matter for ruling on 6<sup>th</sup> November, 2012. That before Justice Muga Apondi, as he then was, could write and deliver the judgment he was declared not suitable to serve as a Judge of the High Court of Kenya by the Judges and Magistrates Vetting Board. That by letter to the Hon. the Chief Justice a copy whereof was handed to me, the Hon. Lady Justice Lesiit Resident Judge, Meru proposed to pass this file to me to deliver the ruling. I received the file on 11<sup>th</sup> April, 2013 and upon perusal of the same I found that the respondent's Counsel and the Interested Party's Advocate though served and given sufficient time to file their response they did not do so. This being an old matter I will have to consider the application on strength of documents on record. In this application the ex parte applicant LYDIAH MWITIABI M'IMUNYUA filed Land Disputes Tribunal Case No.36 of 2009 before the Land Disputes Tribunal at Meru Central District. This was before the Land Disputes Tribunal Act had been repealed by Act No. 19/2011. The ex-parte applicant is mother to the Interested Party. The land in dispute as per verifying affidavit of the ex parte applicant NYAKI/MULATHANKARI/1194 is as per annexure "LMMI" jointly registered in ex parte applicant's name and that of the interested party. That the land measures 0.405 hectares or 1 acre on which ex parte applicant has a permanent house standing on the suit land. The tribunal decided that the land be shared as follows:- ex parte applicant to get 0.30 acres and interested party to get 0.70 acres as per award annexed and marked as "LMM2"

The ex parte applicant averred that the Tribunal acted on the case when it had no jurisdiction to allocate the land which is jointly owned in equal shares. The applicant further averred that the sub-division ordered by the tribunal is unfair, without jurisdiction and against the provision of the Registered Land Act (cap.300) now repealed by Act No.3/2012. That though the award had been filed as Meru CM LDT Case No.63 of 2009 and read to the parties same is yet to be confirmed as judgment of the court. The Registered Land Act (Cap.300) (now repealed) provided under Section as follows:-

***"106. (1) Where the land sought to be partitioned is capable of partition generally, but the resultant share of any particular proprietor in common would be less in area than any minimum prescribed by or under any written law, the Registrar shall add such share to the share of any other proprietor or distribute such share amongst two or more other proprietors in such manner and in such proportions as, in default of agreement, he thinks fit.***

***(2) Where the Registrar proceeds in accordance with subsection (1), he shall assess the value of the share added or distributed and shall order that there be paid to the proprietor of the share by each proprietor who has received an addition to his share the value of such addition.***

***(3) Where any sum is payable under subsection (2) by any proprietor in common to any other proprietor in common, the Registrar may order that such sum be secured by way of charge on the share of the person liable to pay it."***

Further the Registered Land Act under Section 10 2(1),(a),(b), 2(a),(b) and (3) of the Registered land Act provides:-

***102. (1) Where the land, lease or charge is owned jointly, no proprietor is entitled to any separate share in the land, and consequently –***

***(a) Dispositions may be made only by all the joint proprietors; and***

***(b) On the death of a joint proprietor, his interest shall vest in the surviving proprietor or the surviving proprietors jointly.***

***(2) For avoidance of doubt, it is hereby declared that –***

***(a) The sole proprietor of any land, lease or charge may transfer the same to himself and another person jointly; and***

***(b) A joint proprietor of any land, lease or charge may transfer his interest therein to all the other***

**proprietors.**

**(3) Joint proprietors, not being trustees, may execute an instrument in the prescribed form signifying that they agree to sever the joint proprietorship, and the severance shall be completed by registration of the joint proprietors as proprietors in common and by filing the instrument.**

The Land Dispute Tribunal Act(Chapter 303 A) repealed under which the Dispute was referred to the Tribunal provided under Section 3(1),(a),(b),(c),(d) as follows:-

**“3. (1) Subject to this Act, all cases of a 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 section above is clear that the tribunal could only deal with cases of civil nature involving disputes stated herein above but not claim over a registered land over issue of jointly registered land. The Land Disputes Tribunal purported to have power to order cancellation of joint title and sharing the land between exparte applicant and interested party was beyond its jurisdiction. A jointly owned land can only be severed by agreement of joint proprietor to sever the joint proprietorship and upon registration of joint proprietorship as proprietors in common and by filing the instrument

I am after considering the exparte applicant’s application and unchallenged averments of the exparte applicant satisfied that the Land Disputes Tribunal had no jurisdiction to deal with the matter over a parcel of land registered under the Registered Land Act and over allocation of the said land. The award of the land disputes Tribunal violated Section 106 and 102 of the Registered Land Act(Cap.300) and it exceeded its jurisdiction.

The upshot is that the exparte applicant’s application is meritorious and ought to be granted. In view of the foregoing I make the following orders as follows:-

**(a). An Order of certiorari be and is hereby granted and issued to bring to this Honourable Court the decision of Meru Central District Land Disputes Tribunal Case No. 36 of 2009 dated 11<sup>th</sup> September, 2009 and filed in Meru CMC LDT Case No.63 of 2009 and read to the parties by Chief Magistrate for the purpose of being quashed forthwith.**

**(b). I order each party to bear its own costs as the exparte applicant and interested party is mother and son, and the exparte applicant is the one who had referred the matter to the tribunal which lacked jurisdiction and furthermore the respondent and interested party did not contest the exparte applicant’s application.**

DATED, SIGNED AND DELIVERED AT MERU THIS 23<sup>RD</sup> DAY OF MAY, 2013.

**J. A. MAKAU**  
**JUDGE**

**DELIVERED IN OPEN COURT IN THE PRESENCE OF:**

1. Mr. Rimita(J) for the exparte applicant
2. Mr. Menge for the respondent(absent)
3. Mr. E. Ogoti for the interested party(absent)

**J. A. MAKAU**  
**JUDGE**