



REPUBLIC OF KENYA

HIGH COURT AT KAKAMEGA

JUDICIAL REVIEW 4A OF 2010

**IN THE MATTER OF AN APPLICATION BY GABRIEL NETIA OLOO FOR ORDERS OF  
JUDICIAL REVIEW CERTIORARI**

**AND**

**IN THE MATTER OF THE DECISION AND AWARD OF THE LAND DISPUTE TRIBUNAL  
LUGARI DIVISION CASE NO. KAKAMEGA/LUGARI/CHEKALINI/015/06 CONCERNING  
LAND PARCELS – KAKAMEGA/CHEKALINI/1022 AND THE UNNUMBERED COUNTY  
COUNCIL PLOT EXCHANGED WITH KAKAMEGA/CHEKALINI/1020**

**AND**

**IN THE MATTER OF ADOPTION PROCEEDINGS COMMENCED IN KAKAMEGA CHIEF  
MAGISTRATE’S COURT AWARD NO. 59 OF 2009**

**AND**

**IN THE MATTER OF THE REPUBLIC .....APPLICANT**

**VERSUS**

**THE CHAIRMAN,**

**LAND DISPUTES TRIBUNAL LUGARI DIVISION ..... RESPONDENT**

**THE CHIEF MAGISTRATE – KAKAMEGA ..... RESPONDENT**

**AND**

**JANERUSA AGUTU NETIA ..... INTERESTED PARTY**

**AND**

**EXPARTE – GABRIEL NETIA OLOO .....APPLICANT**

## **RULING**

The Ex-parte Applicant has with the leave of the court filed the Notice of Motion dated 30.3.10 for the following orders:-

1. That an order of Certiorari do issue directed against the Lugari Land Disputes Tribunal to remove into this court and quash the decision in Lugari Land Dispute Tribunal No.

Kakamega/Lugari/Chekalini/015/06 concerning land parcels Kakamega/Chekalini/1022 and the unnumbered County Council Plot exchanged with Kakamega/Chekalini/1030 together with the proceedings, adoption and decision in Kakamega Chief Magistrate Civil Award No. 59 of 2009.

2. Costs be provided for.

The main ground on which the application is premised is that the Tribunal lacked Jurisdiction and therefore the Tribunal's decision was a nullity.

In the affidavit verifying the facts contained in the Statutory Statement, the applicant deponed that he is the registered owner of Land Parcel No. KAKAMEGA/CHEKALINI/1022. That he also owned land parcel No. KAKAMEGA/CHEKALINI/1032 which he exchanged with the Kakamega County Council for a Plot which is yet to be surveyed and given a number. That the Interested Party, JANERUSA AGUTU NETIA who is his wife commenced the proceedings before the Tribunal. According to the Applicant, the proceedings and decision of the Tribunal are a nullity **ab initio** and incapable of being adopted and enforced in court.

No affidavit in reply to the application was filed by the Respondent. The applicant and the Respondent filed written submissions. I have considered the pleadings and the submissions filed.

In its award, the Tribunal made the following orders, inter alia:-

***“The four acres given to JANERUSA should be surveyed by a Government Surveyor. The acres should extend to TURBO-WEBUYE road so that mama Janerusa can get an access road. Also the 5½ acres exchanged by the old Kakamega County Council to mzee should be shared equally.”***

This was a decision on ownership of land. The Tribunal clearly acted outside its mandate as provided for by S.3 of the Land Disputes Tribunal Act No. 18 of 1990 which stipulates as follows:-

***“S.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 Tribunal's decision is signed by one Mr. Osbourne Libaako as the Secretary on behalf of the Chairman. The composition of membership of the tribunal is not reflected in the said decision. The decision of the Tribunal is also not signed by the members. It is therefore not possible to tell whether S.4 and S.6 of the Land Disputes Tribunal was complied with by the Tribunal.

The Tribunal's decision is therefore anullity. The Notice of Motion dated 30.8.10 has merit and is allowed. The decision of the Lugari Division Land Disputes Tribunal case No. 15 of 2006 concerning land parcels No. KAKAMEGA/CHEKALINI/1022 and the unnumbered County Council Plot exchanged with KAKAMEGA/CHEKALINI/1020 together with the Proceedings in Kakamega Chief Magistrate's court Civil Award No. 59/09 are removed into this court and are hereby quashed. Each party to bear its own costs.

***Delivered, dated and signed at Kakamega this 15<sup>th</sup> day of March, 2012***

**B. THURANIRA JADEN**

**J U D G E**