



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**

**Miscellaneous Civil Application 84 of 2011**

**IN THE MATTER OF AN APPLICATION BY PETER OTARA MASESE FOR LEAVE  
TO APPLY FOR JUDICIAL REVIEW (CERTIORARI AND PROHIBITION)**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

**AND**

**IN THE MATTER OF KEUMBU LANDS DISPUTE TRIBUNAL (KEUMBU DIVISION)**

**BETWEEN**

**PETER OTARA**

**MASESE.....APPLICANT**

**-VERSUS-**

**KEUMBU LAND DISPUTES TRIBUNAL (KEUMBU  
DIVISION.....RESPONDENT**

**AND**

**SOTERI KIBOMA.....INTERESTED  
PARTY**

**RULING**

The Notice of Motion dated 30<sup>th</sup> September 2011 is expressed to be brought under Order LIII Rules 3 and 4 of the **Civil Procedure Rules** and Sections 8 and 9 of the **Law Reform Act** Cap 26 Laws of Kenya. It seeks the following orders, inter alia:

- 1. That this honourable court be pleased to issue an order of judicial review in the nature of certiorari to remove unto this court and quash the proceedings of Keumbu Lands Dispute Tribunal Case No. 23 of 2011 which has a complaint concerning land parcel Nyaribari Chache/Keumbu/302 which is registered in the name of the exparte applicant.*
- 2. That the honourable court be pleased to issue an order of prohibition prohibiting the respondent and the interested party from further entertaining, adjudicating upon, further hearing Keumbu Lands Disputes Tribunal Case No. 23 of 2011.*

3. That the honourable court is at liberty to issue and/or grant such order or further relief(s) as it may be proper and expedient.

The application is ex-parte in that none of the respondents has entered any appearance nor lodged any opposition to the motion now before me though duly served. However, the following facts have been established through the statement of Judicial Review, the notice of motion, the affidavit in support of the application, the applicant's written submissions in support of thereof, the certificate of official search and the certified copy of the Title Deed.

The applicant has been the registered proprietor of the land parcel known as **Nyaribari Chache/Keumbu/ 302** (the suit land) since 29<sup>th</sup> March, 1969 and the suit land has not been encumbered in any way. It is not in dispute that the applicant purchased it from the father of the Interested Party or respondent and fully paid the consideration for it. Subsequently, he has been in quiet, uninterrupted and peaceful occupation of it for well over 40 years.

It is apparent that Keumbu Land Disputes Tribunal has registered Land Dispute No. 23 of 2011 between the applicant and the Interested Party or the respondent. The exact nature of the dispute is not clear. But, the applicant maintains that the interested party has registered a complaint in which the Interested party contends that the acquisition of the suit land by the applicant was through fraud. The interested party also has sought the Tribunal's order to have the title currently registered in the applicant's name revoked and a new one issued in his favour.

The applicant submits in his written submissions that the Interested party's claims before the Land Disputes Tribunal are outside the purview of the **Land Disputes Tribunal Act No. 18 of 1990** and the proceedings before it relating to the suit land are a nullity. It is manifestly plain from the said **Act** that the Tribunals formed under the said **Act** are not seized with jurisdiction to entertain matters pertaining to land ownership, acquisition and registered title. Certainly, the Tribunals cannot adjudicate on fraud relating to land.

Jurisdiction is everything to a court of law or Tribunal. If it has no jurisdiction to entertain a matter before it, then it has to down its tools. It cannot act for whatever it does is a nullity. As stated by the Court of Appeal in **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd Civil Appeal No 50 of 1989, Per Nyarangi, J.**

*"Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction."*

See also **Marete – Vs – Republic & 3 others Civil Appeal No. 259 of 2000 (2004) eKLR.**

Further, though it was not fully canvassed before me, I am not satisfied whether the Land Disputes Tribunals still exist in view of the enactment of the **Environment and Land Courts Act 2011.**

In the result, I grant the application as prayed in terms of prayers nos. 1 and 2 of the Notice of Motion dated 30<sup>th</sup> September 2011. The applicant shall have the costs of the motion.

**Ruling dated, signed and delivered at Kisii this 21<sup>st</sup> day of September, 2012.**

**R. LAGAT-KORIR**

**JUDGE**

**In the presence of:**

..... for applicant

..... for respondent

..... for interested party

..... court clerk

**R. LAGAT-KORIR**  
**JUDGE**