



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**Miscellaneous Civil Application 62 of 2011**

**IN THE MATTER OF THE REFORM ACT CAP 26 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF APPLICATION BY SAUL WEKESA NYONGESA**  
**FOR AN ORDER FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT 18 OF 1990**

**AND**

**IN THE MATTER OF THE KANDUYI DISPUTES NO.28 OF 2010**

**REPUBLIC.....APPLICANT**

**~VRS~**

**THE CHAIRMAN KANDUYI LAND**

**DISPUTES TRIBUNAL.....RESPONDENT**

**AND**

**CHARLES MUNGA KIPSANG.....INTERESTED PARTY**

**SAUL WEKESA NYONGESA.....1<sup>ST</sup> EX-PARTE APPLICANT**

**JULIANA NAMAGWA MAINA.....2<sup>ND</sup> EX-PARTE APPLICANT**

**JUDGMENT**

The 1<sup>st</sup> *ex-parte* Applicant was an objector in the proceedings in Kanduyi Land Disputes Tribunal case no.28 of 2010 over land parcel no.E.Bukusu/N.Sang'alo/967 in which the claimant was the Interested Party. The Interested Party claimed that he had in 1980 bought  $\frac{3}{4}$  of an acre and the 1<sup>st</sup> *ex-*

*parte* Applicant was saying he had in 1996 bought one acre of the land. The Tribunal (the Respondent) heard the dispute and found for the Interested Party. The award was sent to the Chief Magistrate Court at Bungoma and adopted as judgment of the court on 26/5/2011. Following leave, the 1<sup>st</sup> *ex-parte* Applicant filed the present motion seeking that the court issues orders of “*Prohibition and Certiorari to remove into this court and quash the decision*” of the Respondent which was read and adopted as judgment of the court on 26/5/2011.

I agree with the Interested Party that the leave that was sought and granted was in respect of Certiorari only, and not Prohibition. It is, however, not in dispute that, whatever the deficiencies of this application, the Respondent did not have jurisdiction under section 3 (1) of the Land Disputes Act no.18 of 1990 (now repealed) to hear or determine a dispute relating to ownership of registered land (**Jotham Amunavi v. Republic, Civil Appeal no.256 of 2002 at Kisumu**), and therefore the proceedings and award were a nullity. They are recalled into this court and quashed by order of Certiorari. Also nullified and quashed is the judgment of the court that adopted the award. Owing to the defects pointed out in the submissions by the Interested Party, I ask the 1<sup>st</sup> *ex-parte* Applicant to pay costs of the motion.

Dated, signed and delivered at Bungoma this 17<sup>th</sup> day of September, 2012.

**A. O. MUCHELULE**  
**JUDGE**