



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Judicial Review 65 of 2011**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE KAKAMEGA MUNICIPALITY LAND DISPUTES TRIBUNAL  
CASE NO. 24 OF 2011**

**AND**

**IN THE MATTER OF LAND PARCEL NO. ISUKHA/SHIRERE/5299**

**AND**

**IN THE MATTER OF THE KAKAMEGA C.M.C. MISC. AWARD NO. 24 OF 2011**

**BETWEEN**

**REPUBLIC, THROUGH CALEB MUYAKANE ABUNYIHWAS.....1<sup>ST</sup>  
APPLICANT**

**RUTH MARGARET OCHAMI.....2<sup>ND</sup> APPLICANT**

**AND**

**THE CHAIRMAN KAKAMEGA MUNICIPALITY LAND DISPUTES  
TRIBUNAL.....RESPONDENT**

**AND**

**MARQUILINE AGATSA SHIKAMI.....INTERESTED  
PARTY**

**RULING**

The application by way of Notice of Motion dated 28<sup>th</sup> December, 2011 seeks orders that the applicants, CALEB ABUNYIHWAS MUNYAKANE and RUTH MARGARET OCHAMI be granted an order of Certiorari to remove into this court for the purposes of being quashed the decision of the Kakamega Municipality Land Disputes Tribunal No. 2 of 2011 and all consequential orders thereto in Kakamega C.M.C.Misc. Award No. 24 of 2011 in respect of land parcel No. ISUKHA/SHIRERE/5299.

According to the affidavit in support, the applicants are the registered owners of L.P. NO. **ISUKHA/SHIRERE/2199**. That the Kakamega Municipality Land Disputes Tribunal sitting in case No. 2 of 2011 made a verdict on 8.4.11 which was adopted in Kakamega CMC Misc. Award No. 24/11. The Tribunal's decision, *inter alia*, was that L.P. NO. **ISUKHA/ SHIRERE/2199** was fraudulently sold to the applicants by one ZAKAYO SHIRAKU. The Tribunal declared the sale **null and void**.

According to the applicants, the Land Disputes Tribunal acted in excess of its jurisdiction and/or its decision is **ultra vires**.

The Tribunal's jurisdiction is set out in Section 3 (1) of the Land Disputes Tribunal's Act No. 18 of 1990 which stipulates as follows:-

*“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 acted in excess of its jurisdiction when it purported to declare the sale transaction null and void.

The Tribunal's decision was made on 8.4.11. The same was adopted by the court on 26.5.11 in Kakamega CMC Misc. Award No. 24 of 2011 as per the affidavit of the applicant which is not challenged by any other evidence.

The Chamber Summons application that sought leave to file the Judicial Review proceedings was filed on 10.11.11. From the date of adopting the award to the date of filing these proceedings is less than six months.

The application has merits and is allowed. Each party to meet own costs.

***Delivered, dated and signed at Kakamega this 22<sup>nd</sup> day of November, 2012***

**B. THURANIRA JADEN**

**JUDGE**