



**REPUBLIC OF KENYA**

**High Court at Bungoma**

**Miscellaneous Application 108 of 2010**

**IN THE MATTER OF THE LAND DISPUTE TRIBUNAL**

**CASE NO. 4 OF 2010  
OF KANDUYI LAND DISPUTES TRIBUNAL.**

BETWEEN

REPUBLIC..... APPLICANT

VERSUS

CHAIRMAN,

KANDUYI LAND DISPUTES TRIBUNAL..... RESPONDENT

EXPARTE

MARGARET NAKHUNGU OKUMU ..... INTERESTED PARTY

AND

AGNES NANGUNDA OKUMU.....1<sup>st</sup> EXPARTE APPLICANT

FRED WAFULA OKUMU ..... 2<sup>nd</sup> EXPARTE APPLICANT

**RULING**

The motion before the honourable court is the one dated 17<sup>th</sup> may 2011 seeking orders:

i. Of certiorari to remove into this court and quash the proceedings, decision/award of Kanduyi Land Disputes Tribunal No. 4 of 2010 adopted as a decree of the Bungoma Chief Magistrate's court No. 29 of 2010 on the 30th June 2010.

ii. Respondents be condemned to pay costs of the application. The motion was supported by the affidavit of **FRED WAFULA OKUMU**, the 2<sup>nd</sup> applicant and documents annexed thereto. The respondent **MARGARET NAKHUNGU OKUMU** filed an affidavit in reply on 25th June 2012 to oppose the motion.

The parties then filed their respective submission upon which this court was asked to make a ruling.

I have perused the pleadings herein and note the order sought to be quashed was of Kanduyi Land Disputes Tribunal which award was as follows:

1. The claimant Margaret Nakhungu Okumu has the right of occupation of one door collection of its rent and ownership as given to her by the clan decision. Therefore the panel has awarded her a plot measuring 20 x 100 hired from the whole plot No. 35 Bukembe market.
2. The panel of elders recommends that the four parties of the disputed plot – beneficiaries be processed land ownership to avoid further frustrations. The title holder to carry out the exercise with immediate effect.
3. The two objectors are advised to stop interference and sell their door if they so wish.
4. The district surveyor to determine the measurements for every claimant.
5. The panel of elders requests the District Surveyor, Provincial administration and security personnel through the honourable to oversee the exercise.
6. Both objectors Agnes Nangunda Okumu and Fred Wafula Okumu to meet the costs of the case.
7. ENCL: documents marked CL, OB and EX produced evidence. One of the grounds raised by the exparte applicant's motion at ground (a) is that the tribunal acted in excess of its statutory powers.

The powers of the LDT is set out in Sec. 3 (1) of the LDT act NO. 18 of 1990 (now repealed) which are;

(a). division of or determination of boundaries to land including land held

In common.

(b). a claim to occupy or work land.

(c). Trespass to land.

The respondent on its part stated at paragraph 8 of her affidavit that ***“(the tribunal acted within its jurisdiction in view of the fact that mine was a claim under customary law)”***

I have read the submissions of the counsels for the parties. Mr. Ocharo's submissions raised basically two issues namely that the tribunal reached the verdict without involving the registered owner of the said parcel of land yet the verdict was adverse to him hence breaching the rules of natural justice.

Secondly that the tribunal dealt on a matter outside as contemplated by the provisions of Sec. 3(1).

On his part Mr. Situma for the Respondent in his submissions stated that the application was defective as the affidavit was unsigned.

As regards jurisdiction, he urged me to find that the tribunal was acting within its powers as the award related to occupation of the suit premises and merely directed the title holder to process and transfer the same to the requisite parties among them the interested party.

On the issue of the affidavit being unsigned, I decline to uphold the objection because the order of certiorari is meant to correct an error on the face of the record. In the instant case, the court is able to reach a decision just by relying on the notice of motion itself which states on the grounds on the face of it that the tribunal acted in excess of its jurisdiction.

On the issue of jurisdiction, having outlined the content of the award of the tribunal, I am inclined to agree with the exparte applicant that the tribunal acted in excess of its jurisdiction the award no. (1) The

tribunal apart from finding that the interested party had been collecting rent from a shop awarded her a plot measuring 20 x 100 to be hid from plot No. 35 Bukembe market. In prayer (2), the tribunal recommends beneficiaries to process land ownership to avoid further frustrations ordering the title holder to carry out the exercise and finally in prayer (4) the tribunal ordered the District Surveyor to determine the measurement for every claimant. Basically they are not talking about occupation as submitted by the respondent but is giving out land to the beneficiaries.

They exceeded their powers as given by law and the excess power must be quashed.

The merits of the award are not for this court to consider. I do therefore allow the motion, quash the decision of Kanduyi Land Disputes Tribunal case No. 4 of 2010 and adopted in Bungoma CM's court in case No 29 of 2010 on 30.6.10. The parties herein are family members. I do therefore make no orders as to costs.

RULING DATED, SIGNED, READ and delivered in open court this 4<sup>th</sup> day of December 2012.

**A. OMOLLO**

**JUDGE.**