



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**MISC. CIVIL APPLICATION NO. 57 OF 2006**

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

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**CHAIRMAN LAND DISPUTE TRIBUNAL ..... RESPONDENT**

**AND**

**AMIDA NECHESA ..... INTERESTED PARTY**

**REHEMA NECHESA ..... EX-PARTE APPLICANT**

**RULING**

1. The Notice of Motion dated 28.6.2006 is premised on **Order 53 Rule 3(1) and 7 (2)** of the Civil Procedure Rules and in it, the ex-parte Applicant, Rehema Nechesa Watiti, seeks orders that the decision of the Mumias Land Disputes Tribunal made in relation to Land Parcel Number S/Wanga/Ekero/989 be removed and be brought forth and be quashed by this court for the following reasons;

- i. That the claim was time barred;
- ii. That the Tribunal lacked jurisdiction to adjudicate over the dispute.

2. The two issues above were set out in the Statement of Facts dated 3.3.2006 and the Verifying Affidavit sworn by the Applicant on the same date. No submissions were made by the advocate for the Applicant who relied entirely on those facts and I deem it fit to reproduce part of the Ruling of the Tribunal which was signed but was undated. It reads as follows;

***“We find that the defendant took up succession cause of this land secretly while with a clear knowledge of the reasons why some other people were staying on the same land with ground marks as boundaries of their portions of land. We notice the failure by the defendant to trace history connecting her father and the late KALANDE, and therefore we choose to go by the evidence of the two plaintiff’s witnesses whom we are fully satisfied that they were present during the existence of KALANDE and WATITI SIKAWA. We believe KALANDE paid two cows for the portion of land to WATITI SIKAWA in 1967. (sic)***

***The claim is then overwhelmingly proved by the Plaintiff. And let the Plaintiff get the parcel of land No. s/Wanga/Ekero/989 by transfer from the name of the defendant to the name of the Plaintiff. If the defendant refuses to sign documents for such a transfer, let the court sign on her behalf.***

**SIGNED BY:-**

***Lameck E. Mang’eti - Chairman  
Jane E. Shiala - Secretary  
Rosylin M. Wamukoya - Member  
Wilfred O. Walutsachi - Member  
John P. S. Mandu - Member”***

3. The Interested Party, Amida Nechesa Kalande in her Replying Affidavit sworn on 11.11.2009 stated that the claim was not time barred and the Tribunal had Jurisdiction to determine the dispute. Further, that the land was awarded to her on merit and that she was entitled to the land by adverse possession having been on it since 1967.

4. The Interested Party also claimed that when the Applicant sought a grant of letters of administration, she did so with the intent of defrauding the Kalande family of title No. 989 which she proceeded to register in her names.

5. On my part, the matter portends no difficulty at all. From the matters placed before me, the Applicant obtained title to the suit land through a Succession Cause whose details are unclear but it matters not because all parties are in agreement on that point. It is not the business of the Land Disputes Tribunal to overturn the decision of a Probate Court no matter the merits of the claim. The Law of Succession Act, Cap 160 has a clear mechanism by which grants can be challenged and that was the best forum to overturn the decision to transmit parcel No. 989. The Tribunal clearly had no jurisdiction to purport to sit as an appellate court with regard to that issue where a grant is obtained secretly as was alleged in this mater. **Section 76** of Cap160 gives the court the power to revoke the grant and all actions

taken pursuant to it. That power is not extended to the Tribunal.

6. Secondly, as can be seen, the Tribunal went ahead to determine that whereas the Applicant obtained the suit land by transmission and pursuant to the Succession Cause, the title was unlawfully obtained and should be transferred to the Interested Party. Obviously, it had no Jurisdiction to do so by dint of **S.159** of the Registered Land Act, Cap 300 as read with **S.3(1)** of the Land Disputes Tribunals Act, No. 18 which both provide as follows;

***“S.159 – Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate’s Court, or, where the dispute comes within the provisions of Section 3 (1) of the Land Disputes Tribunal Act , in accordance with that Act.”***

**‘AND’**

***“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.”***

7. The import of the two provisions above is that the mandate to determine whether title to land was lawfully obtained or not, lies with the Court and not the Tribunal.

8. Lastly, I see no credible answer to the Motion before me because the issues of adverse possession are not matters to be addressed by the Tribunal but by the High Court under **S.38** of the Law of Limitations Act. The Interested Party’s submission in that regard is therefore misplaced. Further, whether the Interested Party was entitled to the land on merit is not a matter for judicial review as the orders sought look to the process rather than the merits of a party’s case. Merit is a matter for the Civil Court in that Jurisdiction only and not in the purview of Judicial review orders.

9. It will be seen that I have not said and will say nothing about the issue of the claim being time-barred because none of the parties extra-polated on the matter and it was a very hazy issue for me to make a determination one way or the other.

10. The Motion before me is clothed with merit and is granted in prayer 1 thereof.

11. Let each party bear its own costs as none of them is to blame for the actions of the Tribunal.

12. Orders accordingly.

*Delivered, dated and signed at Kakamega this 22<sup>nd</sup> day of February, 2011.*

**ISAAC LENAOLA**

**J U D G E**