



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO.95 OF 2009**

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

**AND**

**IN THE MATTER OF AN APPLICATION**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**BAHATI DISTRICT LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT  
CHIEF MAGISTRATE, NAKURU.....2<sup>ND</sup> RESPONDENT**

**VERSUS**

**DAVID MUNGA MACHARIA.....INTERESTED PARTY**

**VERSUS**

**CHRISTOPHER M. NWANGI.....SUBJECT**

**RULING**

Pursuant to leave granted on 30<sup>th</sup> September, 2009, the applicant has instituted these proceedings for orders of *certiorari* to quash the decision of Bahati Land Disputes Tribunal in Case No.146 of 2009 on the ground that the Tribunal had no jurisdiction to entertain the dispute. The Tribunal and the Chief Magistrate, Nakuru sued as respondents did not enter appearance or respond to the application. The interested party has replied to the application stating that the Tribunal had jurisdiction to entertain the dispute as it relates to trespass; that he (the interested party) is the lawful owner of the suit property No. BAHATI/BAHATI BLOCK 1/1432 and that the applicant's title was fraudulently obtained. I have considered the application, the reply, submissions and the two authorities cited by counsel for the applicant. The interested party made a reference to the Tribunal over the disputed property. The tribunal after hearing the parties made the following decision:

**“We the Bahati Land Disputes Tribunal has ruled as follows:-**

**Mr. David Munga Macharia, whose document was taken away by the Assistant chief James Mwangi by force and forced to sign the document is the rightful owner of the land Ref. No. Bahati/Bahati Block 1/1342.**

**Mr. Christopher C. Mwangi be compelled by the Hon. Court to vacate from the land in Bahati/Bahati Block 1/1342 and go to his land in Elementaita.”**

A title deed under the **Registered Land Act** in respect of the suit property was issued to the applicant on 30<sup>th</sup> December, 1987. That title was being challenged in 2009, after 12 years.

The jurisdiction of the Land Disputes Tribunal has been the subject of numerous judicial review applications. **Section 3(1)** of the **Land Disputes Tribunal Act** must be the first reference point to members of the land disputes tribunals. It is what gives them the power to act. **Section 3(1)** aforesaid is clear that the tribunal can only entertain disputes relating to division of or the determination of boundaries to land, including land held in common, a claim to occupy or work land and trespass to land.

I have set out the decision of the tribunal in the previous paragraph. The interested party has argued that the dispute related to trespass to land. The Tribunal declared emphatically that the rightful owner of the suit land was the interested party, yet the applicant is the holder of a title deed that was merely said to be “fake” without any evidence. The Tribunal, I find had no jurisdiction to entertain a dispute in respect of land ownership. Its decision rendered on 2<sup>nd</sup> September, 2009 is hereby quashed.

The chief Magistrate was sued as the 2<sup>nd</sup> respondent. However no relief was sought against her although it has been averred that the tribunal decision was adopted by the Chief Magistrate as Nakuru C. M. Land Dispute No.44 of 2009 on 8<sup>th</sup> October, 2009.

Having found that the tribunal had no jurisdiction and having quashed the same, all the subsequent proceedings and orders are of no consequence. Costs are awarded to the applicant to be borne by interested party.

**Dated, Delivered and Signed at Nakuru this 25<sup>th</sup> day of March, 2011.**

**W. OUKO**

**JUDGE**