



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

JUDICIAL REVIEW NO. 82 OF 2009

REPUBLIC.....APPLICANT

VERSUS

IMENTI NORTH LAND DISPUTE TRIBUNAL.....1ST RESPONDENT
THE CHIEF MAGISTRATES MERU LAW COURTSINTERESTED PARTY
JOEL LIVINGSTONE MWEBIA.....EX PARTE APPLICANT

JUDGMENT

Justus Meme Kamunya (**Meme**) the interested party in this matter referred a dispute to Meru Central District Land Dispute Tribunal in Case No. 2 of 2009. The proceedings before that tribunal show that Joel Livingstone Mwembia (**Mwembia**) the *ex parte* applicant who was an objector in that case did not attend the hearing. The issue presented before the tribunal by Meme was that he wished the land parcel No. *Abothuguchi/Kithongo/527* be divided amongst him and Mwembia. That parcel of land is registered in the name of Katheriya son of Kirigia which name Meme says is also his name. That parcel of land is registered under the Registered Land Act Cap 300 (RLA.). The tribunal determined the dispute thus:-

“The suit land Abothuguchi/Githongo/527 1.20 acres in size, should be shared equally between the two brothers;

- ***Justus Meme Kamenya to get 0.60 acres***
- ***Joel Livingstone Mwembia to get 0.60 acres.”***

Mwembia now by his Notice of Motion dated 9th November 2009 seeks Judicial Review order of *certiorari* to quash that decision. As rightly argued before me, the District Land Tribunal had no jurisdiction to order the subdivision of the land which is registered under RLA. The excesses of exercise of jurisdiction by the tribunals are the subject of many decisions in the courts of laws. In this regard, just to quote one such case in support of the arguments before me is the case **Jidraph Nyoro Kang’ethe vs. Silas Kang’ethe Nyoro** Civil Appeal No. 109 of 2001. The court stated as follows:-

“The jurisdiction of the Tribunal to deal with land registered under the Registered Land Act (Cap 300) is found in section 159 of the Act That jurisdiction is limited by section 3(1) of LDTA Act No. 18 of 1990 which provides for cases which may be heard and determined by the tribunal.

These are 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 on land; or***
- c) Trespass to land.”***

These are the only matters which the tribunal has power to deal with. Act No. 18 of 1990 does not confer upon the Tribunal to interfere with the interest of a registered proprietor whose title is protected by sections 27 and 28 of Cap 300.

In Republic vs. Olololunga Land Disputes Tribunal ex parte Isaiah Kiplangat Cheluget (Nairobi HC Misc. C. 926 of 1999) Aganyanya J. faced with a similar situation stated:-

Yet under the Land Disputes Act – No. 18 of 1990 the functions of the Tribunal are limited to the division of, or the determination of boundaries to land including land held in common; a claim to occupy or work on land or trespass to land. (See section 3 of the Act) What the tribunal in the case subject to this application engaged itself in, would end up with the rectification of the register but in the circumstances prevailing herein, this would go against the spirit of section 143 (1) of the Registered Land Act – Chapter 300..... When the (Land Disputes) Act gives members of the Tribunal power to decide on the division or occupation of land it is not saying that the tribunal should encroach on land registered in individual’s name and begin dividing it for the benefit and occupation of third partiesThe Tribunal has no jurisdiction to change the position of a Registered Land.....

More recently, in Gibson Sengete Matoto vs. Eastern Province Land Disputes Committee & Others (Nairobi Mis CA 331 of 2003), Ibrahim, J. held that the Makueni District Land Tribunal Appeals Committee had no jurisdiction to hear and determine questions of ownership and title to land registered under the RLA, and that committee, in doing so, acted ultra vires the statute and the entire proceedings became a nullity once it pronounced on the question of ownership of title.”

The above quotation makes it clear that Meru District Land Tribunal had no jurisdiction to make the decision they made in case of 2 of 2009. This is so even if the land belonged to Meme. This is because the tribunal’s jurisdiction is limited by section 3 of the Land Dispute Tribunal Act. Lord Diplock in the case **Council of Civil Service Union vs. Minister for the Civil Service** [1985] AC in considering illegal decisions which would attract judicial review orders found that a ground of illegality means that a decision maker “*must understand correctly the law that regulates his decision making power and must give effect to it.*” See Wikipedia webpage. In the tribunal case No. 2 of 2009, the members of the District Land Tribunal did not seem to understand the provisions of section 3 of the Land Dispute Tribunal Act. This is the section that should have regulated their decision. It is for that reason that I grant the following orders:-

- 1. An order of certiorari is hereby issued to move to this court the decision of Meru Central District Land Dispute Tribunal case No. 2 of 2009 of 6th May 2009 and the same is hereby quashed.*
- 2. The failure of the Tribunal in making that decision cannot be attributed to any party and I therefore order that each party will pay their own costs.*

Dated, signed and delivered at Meru this 18th day of May 2011.

MARY KASANGO
JUDGE