



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**JUDICIAL REVIEW NO. 16 OF 2009**

**REPUBLIC.....**

**.....APPLICANT**

**VERSUS**

**CHAIRMAN NDIA LAND DISPUTES TRIBUNAL .....1<sup>ST</sup>**

**RESPONDENT**

**SENIOR RESIDENT MAGISTRATE BARICHO.....2<sup>ND</sup>**

**RESPONDENT**

**JOHN NGURE GACHARE.....3<sup>RD</sup>**

**RESPONDENT**

**PAULINE NYAWIRA NGURE.....EX-PARTE**

**APPLICANT**

**RULING**

This is the applicants Application dated 27<sup>th</sup> July 2009 by way of Notice of Motion under Order 53 Rule 3 and 4 of the Civil Procedure Rules and Section 8 and 9 of the Law Reform Act. It is for the following orders:-

- An order of Certiorari to call into the High Court and quash the award of Ndia Land Disputes Tribunal and the order of Baricho Resident Magistrate's Court adopting the said Land Disputes Tribunal award for being ultra vires, arbitrary, oppressive and unreasonable.***

The grounds in support of the Application and the affidavit and statutory statement all indicate that the main issue of contention is the issue of jurisdiction. The Applicant questions the jurisdiction of the Ndia Land Disputes Tribunal to deal with matters of title and ownership of land. The Applicant's annexures are :

- ***Copy of title deed (PNN 1)***
- ***Proceedings before the Tribunal No. 5/08***
- ***Decree by the R.M.'S Court Baricho (PNN 3)***

The Respondents did not file any replying affidavit and neither did they appear for the hearing.

There is no dispute that the land which was the subject of claim before the Ndia Land Disputes is land No. Kiine/Kiringoti/Ngunguine/399 which is registered under the Registered Land Act Cap 300 Laws of Kenya. It is registered in the names of Boniface Ngare Ngure and Pauline Nyawira Nguu. The Title deed has been annexed as (PNN 1).

As a result of the hearing before the Ndia Land Disputes Tribunal this registered land is supposed to be subdivided and the 3<sup>rd</sup> Respondent John Ngure Gachage gets ¾ acre there from.

This decision of the Tribunal was adopted as an order of the court on 25/09/2008. This Tribunal is a creature of the Land Disputes Tribunal's Act which also regulates its powers.

Does the Tribunal have power to cancel title deeds issued under Registered Land Act? Section 3 of the Land Disputes Tribunal Act is the one that confers jurisdiction on the Tribunal. Under it the Tribunal deals with the following:-

- ***Division of/or determination of boundaries including***
- ***Land held in common;***
- ***A claim to occupy or work land; and***
- ***Trespass to land.***

The claim of who owns what share where is not part of what the Tribunal is mandated to do.

In the case of **Joseph Mikenya Khatonji Vs Chairman Shinyalu Land Disputes Tribunal & Another, Misc. Civil Application No. 4/2008 Kakamega High Court Justice Chetembwe.**

***“The jurisdiction of the Land Dispute Tribunal is specifically stated in Section 3 of the Land Disputes Act No. 18/90. Such jurisdiction does not include the cancellation of title deeds. Even the subordinate courts have no jurisdiction to cancel title deeds. It's clear from the outset that the Tribunal acted in excess of its jurisdiction”***

The Tribunal in effect cancelled the Applicants' title to create room for John Ngure Gachage to get ¾ acre therefrom. This was *ultra vires* the Land Disputes Act. It is only the High Court which has jurisdiction to cancel Title deeds by virtue of Section 159 of Registered Land Act.

I find for the exparte Applicant and make the following orders:-

This court calls back the decision of the Ndia Land Disputes Tribunal Case No. 5/2008 and read in court before the Resident Magistrate court Baricho LDT No. 7/08 and quashes that decision.

There shall be no orders as to costs.

**DELIVERED, SIGNED AND DATED AT EMBU THIS 31<sup>ST</sup> DAY OF OCTOBER 2011.**

**H.I. ONG'UDI  
JUDGE**