

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
Miscellaneous Civil Application 51 of 2005

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW
FOR ORDERS OF CERTIORARI AND FOR AN APPLICATION FOR
SUCH RELIEF**

AND

**IN THE MATTER OF MERU CENTRAL DISTRICT LAND DISPUTES
TRIBUNAL CASE NO. 45 OF 2003 (READ IN MERU CMCC LDT NO.
140 OF 2004)**

AND

IN THE MATTER OF L.R NO ABOOTHUGUCHI/U.KAONGO/1213

BETWEEN

THE REPUBLIC APPLICANT

VERSUS

**THE MERU CENTRAL DISTRICT LAND
DISPUTES TRIBUNAL 1ST RESPONDENT
RAEL GACHOGA 2ND RESPONDENT**

JUDGMENT

The ex parte applicant sued the 2nd respondent before the Meru Central Land Dispute Tribunal in Case No. 45 of 2003. He claimed in that action that he had bought parcel number Abothuguchi/Kaongo/1213 from Guantai M'Rimberia. He said that he purchased that land in September 2001 and had obtained a title in his name. He annexed the green card to show his ownership of that parcel of land. He claimed before the Land Dispute Tribunal that the 2nd respondent had refused to move out of his parcel of land. He therefore sought that the tribunal would give orders of eviction against the 2nd respondent. The 2nd respondent in her evidence before the tribunal said that the property belonged to her husband M'Rimberia who had inherited from his mother. She said that she was in occupation of that land together with her daughter and another man called Mwongera. The tribunal by its judgment ordered the cancellation of the ex parte applicant's title and further ordered that the parcel of land be sub divided with the ex parte applicant getting one acre and the 2nd respondent getting one acre. That judgment provoked the present action by the ex parte applicant seeking judicial review orders to quash the same. When the matter came for hearing before me, the 2nd respondent although had been served failed to attend court. Counsel for the Republic Mr. Maroro stated that he did not oppose the ex parte applicant application but requested the costs would not be awarded against his client. The orders given by the Tribunal exceeded the jurisdiction given to the Tribunal by the Land Dispute Tribunal Act. Section 3(1) of that Act provides as follows:-

“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.”

Looking at the provisions of that section, it is clear that the Tribunal had no power to order the cancellation of the title of the ex parte applicant. They also had no power to order that some of the land be transferred to the 2nd respondent. There has been countless number of decisions in that regard and it is

surprising that despite the wealth of decision showing the limit of jurisdiction of the tribunal the tribunals even today make decisions which are ultra vires to the Land Dispute Tribunal Act. One of such cases is Jotham Amunavi Vs. The Chairman Sabatia Division Land Disputes Tribunal & Ano. Civil Appeal No. 256 of 2002. The Court of Appeal in that case had this to say:-

“The implementation of the decision of the tribunal entails the sub division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (See Section 89 of the RLA.).

It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of Section 3(1) of the Land Disputes Tribunal Act. By Section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrates’ court in cases where such latter court has jurisdiction.”

I am therefore of the view that the application by the ex parte applicant is well deserving. I grant the following orders:-

1. This court does call back the decision of Meru Central District Land Dispute Tribunal case No. 45 of 2003 and read in court before the Chief Magistrate Meru LDT No. 140 of 2004 and this court does hereby quash that decision.
2. There shall be no orders as to costs.

Dated and delivered at Meru this 19th March 2010.

MARY KASANGO
JUDGE