



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

OF KISII

Judicial Review 100 of 2009

**IN THE MATTER OF APPLICATION BY JACKSON OTEKI NYAMIERI FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW (CERTIORARI AND PROHIBITION)**

AND

IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990

AND

IN THE MATTER OF NYAMUSI LAND DISPUTES TRIBUNAL (NYAMIRA DISTRICT)

AND

IN THE MATTER OF SENIOR RESIDENT MAGISTRATE'S COURT AT NYAMIRA

AND

IN THE MATTER OF NYAMIRA SRM'S MISC. CIVIL APPL. NO. 22 OF 2009

AND

IN THE MATTER OF NYAMUSI LAND DISPUTES TRIBUNAL NO. 18 OF 2008

BETWEEN

REPUBLIC APPLICANT

VERSUS

**NYAMUSI LAND DISPUTES TRIBUNAL,
NYAMIRA DISTRICT 1ST RESPONDENT
THE SENIOR RESIDENT MAGISTRATE'S
COURT AT NYAMIRA 2ND RESPONDENT
THE ATTORNEY-GENERAL 3RD RESPONDENT**

AND

NORAH BOSIBORI BASWETI INTERESTED PARTY

VERSUS

RULING

The jurisdiction of a Land Disputes Tribunal is clearly stated under **section 3 (1)** of the **Land Disputes Tribunals Act, 1990**, as follows:

“Subject to this Act, all cases of a civil nature involving disputes 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.”

In this matter the ex-parte applicant sought an order of certiorari to remove into this court and quash the proceedings and the decision delivered on 15th April 2009 by the 1st respondent in **Tribunal Case No. 18 of 2008**. He also sought a similar order against the decision of the 2nd respondent in **Misc. Civil Application No. 22 of 2009** vide which the court adopted the 1st respondent’s award. The ex-parte applicant further sought an order of prohibition to prohibit the 1st and 2nd respondents from implementing their respective orders.

The application was made on the grounds, *inter alia*, that:

- **The 1st respondent acted in excess of its jurisdiction by adjudicating on the proprietary interest of a parcel of land known as North Mugirango/Bomwagamo/29 (the suit land) notwithstanding the express mandate of the Tribunal as provided for under section 3 (1) of the Land Disputes Tribunals Act and section 6 (1) of the Land Control Act.**
- **That the 1st respondent acted in excess of its jurisdiction by deliberating upon a claim which was null and void without taking into account the provisions of the law of Succession Act, Cap 160 Laws of Kenya since the claim before it was brought on behalf of a deceased claimant by a person who had no authority to represent the interest of the deceased.**
- **That the 2nd respondent erred by giving credence to the unlawful acts of the 1st respondent.**
In his affidavit in support of the application, the ex-parte

applicant deposed that he is the registered proprietor of the suit land. He stated that sometimes in 1981 he sold a piece of the suit land to the husband of the interested party, who is now deceased, but he failed to pay the entire purchase price and the sale agreement became null and void. He further stated that the interested party had not demonstrated any willingness to clear the balance of the purchase price nor had she obtained letters of administration of her deceased husband’s estate as would have enabled her to bring any claim over the land. In any event, such a claim is statute barred as per the provisions of **section 6 (1)** of the **Land Control Act**.

The interested party filed a claim over the parcel of land that was sold by the ex-parte applicant to her deceased husband. The 1st respondent heard the claim and found in favour of the interested party. The Tribunal recommended that the court do order the District Surveyor to survey the piece of land in dispute and order the Executive Officer to sign

both subdivision and transfer forms and have the land in dispute registered in the name of the interested party.

In her replying affidavit, the interested party stated that on 6th January 2010 she obtained letters of administration Ad Litem to enable her pursue this matter for and on behalf of the estate of **Elizaphan Basweti Ongoto**, her deceased husband. She further stated that her late husband purchased a portion of the suit land from the ex-parte applicant in February 1981. A copy of the sale agreement was annexed to the affidavit. Thereafter her family moved into the parcel of land and had been in occupation since then. The purchased portion of the suit land was properly demarcated on the ground. She further contended that having occupied the land since 1981, her family members had acquired title by prescription and adverse possession. Therefore the 1st respondent was right in making its decision in her favour, she claimed.

It is clear that the 1st respondent exceeded its jurisdiction as set out by the provisions of **section 3 (1)** of the **Land Disputes Tribunals Act**. The ex-parte applicant was the registered proprietor of the entire suit land, even though he admitted having sold a portion thereof to the deceased husband of the interested party.

At the time of filing the claim before the Tribunal the interested party had not obtained letters of administration in respect of her husband's estate.

The land had been sold by the ex-parte applicant in 1981. **Section 13 (3)** of the **Land Disputes Tribunals Act** does not confer jurisdiction on Land Disputes Tribunals to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the Limitation of Actions.

The interested party had no **Locus Standi** to institute the claim before the 1st respondent and in any event, the claim was time barred. If the interested party had obtained letters of administration over the deceased's estate, she could have lawfully filed a claim in the High Court and pray that she be registered as the proprietor of the portion of the suit land occupied by her family under the doctrine of adverse possession. A Land Disputes Tribunal does not have power to give any proprietary rights over land where such rights are alleged to have arisen under the doctrine of adverse possession. The 1st respondent clearly acted outside its jurisdiction. Its decision must therefore be quashed.

As regards the ex-parte applicant's prayer for an order of certiorari to quash the decision of the 2nd respondent, I must point out that under the provisions of **section 7 (2)** of the **Land Disputes Tribunals Act**, the Resident Magistrate's Court is under an obligation to enter judgment in accordance with the decision of the Tribunal. It cannot refuse to enter such judgment and neither can it vary, alter or review the same. In such instances the court is performing a statutory duty and any party aggrieved by a decision of a Land Dispute Tribunal can only appeal to the Appeals Committee or institute judicial review proceedings. It is therefore improper to fault a Resident Magistrate's court for adopting an award of a Land Disputes Tribunal. However, where it is shown that a Tribunal's decision ought to be quashed by an order of certiorari, such an order will issue to quash the Tribunal's decision as adopted by the Resident Magistrate's Court. Consequently, I grant the prayers as sought by the ex-parte applicant. The interested party shall bear the costs of

this application.

DATED, SIGNED AND DELIVERED AT KISII THIS 20TH DAY OF APRIL, 2010.

D. MUSINGA
JUDGE.
20/4/2010

Before D. Musinga, J.

Mobisa – cc

Mr. Masese for the interested party

Mr. Kaburi HB for Mr. Nyambati for the ex parte applicant

Court: Ruling delivered in open court on 20th April, 2010.

D. MUSINGA
JUDGE.