



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA
Miscellaneous Application 4 of 2008**

IN THE MATTER OF REGISTERED LAND ACT

AND

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

AND

IN THE MATTER OF L.R. NO. MARACHI/BUJUMBA/334

BETWEEN

REPUBLICAPPLICANT

VERSUS

BUTULA LAND DISPUTES TRIBUNALRESPONDENT

AND

- 1. GODFREY OWINO OLENGO**
 - 2. AUGUSTINO MONDI.....INTRESTED PARTIES**
- AND**

- 1. MUSA BARASA OBICH**
 - 2. SILVANO OKOTH ODUYA.....EXPARTE**
- APPLICANTS**

RULING

The application before the court is a Notice of Motion dated 22.3.2008

Brought by the Ex Parte Applicants Musa Barasa Obichi and Silvano Okoth Oduya through the republic. It seeks an order of certiorari to recall into this court and quash the decision of the Respondent, the Butula Land Disputes Tribunal dated 19.3.2007 but adopted and read by the Busia Principal Magistrate Court in Land case No. 1 f 2008 on 1.2.2008.

The grounds upon which the motion is brought are:

(1) That the tribunal purported to assume the Land Registrar's

Powers under section 21 22 of the Registered Land act,

Cap 300 to investigate and fix boundaries.

2 That the tribunal's decision to issue an order of eviction to the ex parte applicants who are the registered owners is in

access of its powers or jurisdiction under section three of the Land Disputes Tribunal Act, Act 18 of 1990.

I have carefully perused and considered the tribunal's award which is being challenged herein. It states thus:-

**“Musa Barasa Obich is to vacate from
Marachi /Bujumba/334 leaving the whole
Land for Olego's sons, Godfrey Owino
Olengo and Augustino Omondi Olego.
Silvano Okoth Oduya is to surrender two
Acres had occupied from Olegos sons to carry out succession
Original Boundaries to be restored by Districts
Land Registra and District Surveyor.”**

Clearly, the decision and process required to effect it, will entail both a subdivision to exercise the two acres plus a transfer to both the whole piece of land occupied by Musa Barasa Obich and Silvano Okoth Oduya, and the two acres to be surrendered to Silvano Okoth Oduya. In any understanding and view and view, the jurisdiction or power to order for interference of such a substantive beneficial interests are beyond a tribunal set up under section 4 of the Land Disputes Tribunal Act No. 18 of 1990. Section 3 (1) which donates jurisdiction, states thus-

“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 the tribunal established under section 4.**

Straight reading of the above section confirms that the same donated jurisdiction to the tribunal constituted under section 4 of the act on cases of land in respect of which the determination of boundaries claims to occupy or work land trespass to land is concerned. There would be little difficulty in applying the said parts of the section. The problem of interpretation arises only in a relation to “the division of land “as provided in section 3 (i) (a) of the act. Does the “Division of land” therein mean that the tribunal has been donated power to conduct a division of land? If the answer would be yes then clearly the same would be in express conflict with the provision of section 159 of the registered land act which states as follows:-

“Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to, or the possession of, land, or to the title to a lease or charge registered under this Act, or to any interest in the land, lease, or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court or where the dispute comes within the provisions of 3(1) of the Land Disputes Tribunals Act, in

Accordance with that Act.”

The above provision gives jurisdiction only to the High Court or Resident Magistrate’s Court or those Subordinate courts above it, except in matter specified under S.3(1) (a),(b) and (c) of the Land Disputes Tribunal Act.

I have carefully considered the meaning of “the division of land” in subsection (1) (a) the Tribunal Act. The meaning that I find logical and sensible in the

Face of section 159 of the Registered Act is that where the Tribunal’s jurisdiction becomes necessary after “the division” has been undertaken, most probably, by the parties themselves or their clan elders, before a dispute on such division arises. This would tend to limit the Tribunal to some kind of decisions already reached but in respect of which a dispute arises. It also seems to me, by dint of subdivision 7 thereof, that the Tribunal’s power is related to and concerns customary law claims arising from divisions of land, determination of boundaries to and trespass to such land.

I have noted the amendment to the last part of Section 159 which purport to confirm jurisdiction to the Tribunal where the dispute comes within the ambit of section 3(1) of the Land Disputes Tribunal Act in accordance with the Act. It is my view however that the amendment only stresses the jurisdiction already donated; it does not appear to add jurisdiction.

The final conclusion I come to accordingly, is that in land cases where beneficial interest of the parties is the issue, the Tribunal has no jurisdiction and should not determine such suits, not within the jurisdiction of Section 3(1) of the Land Disputes Tribunal Act, Act No. 18 of 1990.

The Court of Appeal in **Jotham Amunavi And the Chairman Sabatia Division Land Disputes Tribunal, Enos Kenyani Amunavi**, Court of Appeal Civil Appeal No. 256 of 2006, had the following to say in the interpretation of S. 3(1) aforementioned –

“By its judgement, the Tribunal in effect awarded ½ acre absolutely to Kenyani from Jotham and recommended that the land be subdivided into two portions so that Kenyani could occupy ½ acre awarded to him...

The implementation of the decision of the Tribunal entails the subdivision of the suit land...and opening of a register in respect of each subdivision and thereafter the transfer of the subdivision of half acre to Kenyani... It is clear that the proceedings before the Tribunal related both to title to land and to beneficial interest in the suit land. Such dispute is not 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 determined by the High Court or by Resident Magistrate’s Court....”

In this case before me the Tribunal ordered not only that Musa Barasa is to vacate the land registered to his name, but also that Silvani Okoth is required to surrender and transfer two acres from his title to them. This will first require the cancellation of the present titles of Musa Barasa Obiche and Silvano Okoth Oduya and thereafter a transfer of the substantive beneficial interest or part thereof, to the interested parties. That would clearly conflict with the clear provision of Section 159 of the Registered Land Act, Cap. 300.

The result I find proper in law, therefore, is that the Tribunal not only had no jurisdiction to make the award complained of but also acted in excess of its powers and jurisdiction. In the circumstances an order of certiorari shall issue recalling the award as adopted by the lower court to this court for quashing and quashing same with immediate effect. There will be no order as to costs.

Orders accordingly.

Dated and delivered at Busia this 29thDay of July, 2010

D.A ONYANCHA

JUDGE