



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**Miscellaneous Application 71 of 2008**

**JUDICIAL REVIEW**

Ø The jurisdiction of the Tribunals as set out in S. 3(1) of the L.D.T. Act

**IN THE MATTER OF APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF JUDICIAL REVIEW IN THE NATURE OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF SECTIONS 8 & 9 OF THE LAW REFORM ACT CAP 283 LAWS OF KENYA**

**AND**

**IN THE MATTER OF MERU NORTH LAND DISPUTES TRIBUNAL CASE NO. 64 OF 2007 AND MAUA SENIOR PRINCIPAL MAGISTRATE LDT NO. 11 OF 2008**

**AND**

**IN THE MATTER OF LAND PARCEL NUMBERS ANTUBETWE/NJOUNE/2583 AND ANTUBETWE/NJOUNE/2585**

**BETWEEN**

**KUBAI M’IKIAMBIA ..... APPLICANT  
VERSUS**

**THE DISTRICT COMMISSIONER MERU  
NORTH DISTRICT ..... RESPONDENT  
JOHN THURANGAI ..... INTERESTED PARTY**

**JUDGMENT**

The interested party filed a claim before the Meru North District Land Dispute Tribunal being case No. 64 of 2007. The interested party in that case stated his case to be as follows:-

*“The land in dispute originated from parcel number 1225. It produced parcel number 2583 (15 points) which is mine and 2584 which is with one Jacob Kubai. The remaining part was left with Kubai M’ikiamba (ex parte applicant). He is the one who sold my parcel to me. He is now refusing to have the land transferred to my name. We have been to the land board but when we went to the ground he turned against what he had agreed to do. I want the tribunal to assist me.”*

The parcels of land that the interested party was referring to in his above evidence are *Antubetwe/Njounne/2583 and 2585*. The two parcels of land are registered in the name of the *ex parte* applicant under the registered Land Act Cap 300. He has annexed to this application certificates of official search confirming the same. The tribunal on receiving the evidence of the interested

party in the absence of the *ex parte* applicant who though had been served failed to attend stated thus:-

### FINDINGS

**“- The claimant has produced sufficient documentary evidence showing proof of purchase.**

**- The objector has persistently disregarded summons of the tribunal, thereby implying mischief and guilt.**

### VERDICT

**The plaint is successful. The objector must transfer the land to the claimant, or pay him the amount stated in the agreement as agreed liquidated damages.”**

The *ex parte* applicant by his Notice of Motion dated 25<sup>th</sup> August 2008 seeks judicial review orders of *certiorari* to call and quash that decision of the tribunal and also seeks an order of prohibition to stop the implementation of the award. The Court of Appeal in the case **Beatrice M'Marete Vs. Republic & Others** Civil Appeal No. 259 of 2000 where it considered a matter that a tribunal had ordered the rectification of a title of land registered under Cap 300 stated thus:-

**“Awarding land to the claimant meant she acquired an interest in it by virtue of that award. In order to put that ruling into effect, the appellant would have to effect it by rectifying or canceling the titles. The issue is whether the Tribunal had jurisdiction to do so. Section 3 (1) of the Land Disputes Tribunals Act 1990 provides:-**

**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.”**

**In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupy or work the land, but a claim to ownership. Taking into account the provisions of Section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction.”**

In the case of **Republic Vs. Msambweni Land Disputes Tribunal & Others ex parte Sogno** [2007] 2 EA Justice Maraga had this to say:-

**“The Land Disputes Tribunals should know that being creatures of statute they can only do what the statute, that is the Land Disputes Tribunal Act number 180 of 1990 authorizes them to do. They have no powers to deal with matters of title to land. They have no powers to revoke any title and have one issued to somebody else as they purported to do in this case. They also have no powers to re-visit disputes that have been determined.”**

There is no doubt that the Tribunal in Case No. 64 of 2007 had no jurisdiction to give the orders that they did. As it can be seen, the tribunal gave orders for specific performance of a contract or in the alternative awarded damages. Section 3 (1) of the Land Dispute Tribunal Act sets out the perimeters within which the tribunal can adjudicate on matters before it. That section is reproduced in the case **M'Marete Vs. Republic** (supra). That Section does not provide for the entertainment of breach of contracts. It therefore follows that even the reading of the award by the learned magistrate in Chief Magistrate Maua Court LDT No. 11 of 2008 was a nullity. It was so stated in the case **Nyandarua District Land Disputes Tribunal & ano. Vs. Meshack Mwangi Maina & Ano.** Misc. Application No. 314 of 2004 where the court was considering a matter where the Tribunal had exceeded its jurisdiction and the court stated:-

**“It follows that both the award and the purported entering of the judgment in terms of the award were nullities. This is so because the maximum *ex nihilo* nil fit applies – “out of nothing comes nothing.” The High Court has a supervisory role to play over inferior tribunals and courts and it would not be fit to abdicate its supervisory role. In my view it has powers to strike out nullities as held in *R. Vs. Attorney Goldenberg Commission ex parte Hon. Mwalulu* at pages 26 – 33.)”**

It therefore follows that the orders sought by the *ex parte* applicant are merited for indeed the Tribunal exceeded its jurisdiction in giving its award. I therefore grant the following orders:-

**1. An order is hereby issued of *certiorari* calling for and quashing the decision of Meru North District Land Dispute tribunal Case No. 64 of 2007 dated 27<sup>th</sup> March 2008 and read by Maua Senior Principal Magistrate court on 16<sup>th</sup> July 2008 in Maua LDT Case No. 11 of 2008.**

2. *An order is hereby issued of prohibition stopping the implementation of the award made in Meru North District Land Dispute Tribunal Case No. 64 of 2007 dated 27<sup>th</sup> March 2008.*

3. *The costs hereof are awarded to the ex parte applicant to be paid by John Thurungai.*

Dated and delivered at Meru this 2<sup>nd</sup> day of July 2010.

**MARY KASANGO**  
**JUDGE**