



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KISII**

**MISCELLANEOUS CIVIL APPLICATION NO. 150 OF 2006**

**IN THE MATTER OF: AN APPLICATION BY ERASTUS OPIYO OTIENO FOR ORDERS OF  
JUDICIAL REVIEW IN THE NATURE OF (CERTIORARI AND PROHIBITION)**

**AND**

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

**AND**

**IN THE MATTER OF: AWENDO LAND DISPUTES TRIBUNAL**

**AND**

**IN THE MATTER OF: RESIDENT MAGISTRATE'S COURT AT RONGO**

**BETWEEN**

**REPUBLIC .....APPLI**

**CANT**

**VERSUS**

AWENDO LAND DISPUTES TRIBUNAL.....1<sup>ST</sup>  
RESPONDENT

THE RESIDENT MAGISTRATE’S COURT – RONGO.....2<sup>ND</sup>  
RESPONDENT

AND

JOSHUA JAOKO OKETCH.....1<sup>ST</sup> INTERESTED  
PARTY

KILION MBOGO RABU.....2<sup>ND</sup> INTERESTED  
PARTY

AND

ERASTUS OPIYO OTIENO.....EX-PARTE  
APPLICANT

### RULING

The ex-parte applicant filed an application seeking the following substantive orders:

- 1. An order of certiorari to remove into this court for purposes of quashing the proceedings and decision of Awendo Land Disputes Tribunal delivered on 17<sup>th</sup> July, 2006 whereby the Tribunal awarded unto the 2<sup>nd</sup> interested party the ex-parte applicant’s land parcel No.North Sakwa/Kanyamgony/1063.**
- 2. An order of certiorari to remove into this court for purposes of quashing the decision of the 2<sup>nd</sup> respondent dated 18<sup>th</sup> August, 2006, adopting the aforesaid decision by the 1<sup>st</sup> respondent as a judgment of the court.**
- 3. An order of prohibition prohibiting the respondents from implementing the decision delivered on 17<sup>th</sup> July, 2006.**

The application was grounded on the affidavit of the ex-parte applicant and the statement accompanying the application for leave to apply for judicial review and the verifying affidavit in support thereof.

In his affidavit, the ex-parte applicant stated that he is the registered proprietor of land parcel **No. North Sakwa/Kanyamgony/1063**, hereinafter referred to as “**the suit land.**” He became the registered proprietor thereof by virtue of first registration immediately after the adjudication process was completed. A land certificate was issued to him on 16<sup>th</sup> December, 1982.

Sometimes in 2006 the 1<sup>st</sup> interested party filed a claim before the Awendo Land Disputes Tribunal claiming that a portion of the suit land belonged to his late father. He further alleged that the ex-parte applicant was illegally cultivating on the land. The claim was decided in favour of the 1<sup>st</sup> interested party as it was held that the suit land belonged to Mbogo Rabu, the 1<sup>st</sup> interested party’s late father. The decision was subsequently adopted by the 2<sup>nd</sup> respondent as a judgment of the court. The ex-parte applicant argued that the Tribunal had no jurisdiction to hear and determine the aforesaid matter.

The 1<sup>st</sup> interested party filed a replying affidavit and conceded that he had commenced proceedings before the Awendo Land Disputes Tribunal seeking recovery of their ancestral land. The case was decided in his favour. He asserted that the Tribunal was right in making the aforesaid decision. He further stated that the suit land is as a result of fraudulent subdivision of the original land known as **Sakwa/Kanyamgony/538** which is their ancestral land and which is still registered in the name of his late father.

The central issue for determination is whether the 1<sup>st</sup> respondent had jurisdiction to hear and determine the claim by the 1<sup>st</sup> interested party. The simple answer is that it did not have jurisdiction. Such a tribunal can only deal with disputes relating to:

- (a) **the division of, or the determination of boundaries to land, including land held in common;**
- (b) **a claim to occupy or work on land; or**
- (c) **trespass to land.**

See **section 3 (1) of Land Disputes Tribunal Act, No. 18 of 1990.**

It has been affirmed by the Court of Appeal that a Land Disputes Tribunal does not have jurisdiction to hear and determine disputes relating to ownership of land. See **ASMAN MALOBA WEPUKHULU & ANOTHER –VS- FRANCIS WAKWABUBI BIKETI**, Civil Appeal No. 157 of 2001. A decision made by a tribunal without jurisdiction is a nullity. At the time when the 1<sup>st</sup> interested party instituted the claim before the 1<sup>st</sup> respondent, the suit land was already registered in the name of the ex-parte applicant. The interested party has nothing to do with land parcel No. 538. If at all the 1<sup>st</sup> interested party had any valid claim over the suit land he should have filed the same before the High Court. The decision by the 1<sup>st</sup> respondent, having been made without jurisdiction cannot stand and its adoption by the 2<sup>nd</sup> respondent was of no legal consequence.

In view of the foregoing, the orders sought by the ex-parte applicant are hereby granted. The 1<sup>st</sup> interested party shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT KISII THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2010.**

**D. MUSINGA  
JUDGE.**

**17/9/2010**

Before D. Musinga, J.

Mobisa – cc

N/A for the Ex parte Applicant

N/A for the Respondent

**Court:** Ruling delivered in open court on 17<sup>th</sup> September, 2010.

**D. MUSINGA  
JUDGE.**