



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**MISC. APPLICATION NO. 111 OF 2009**

**IN THE MATTER OF AN APPLICATION BY MIRIAM MARITIM FOR LEAVE TO  
INSTITUTE JUDICIAL REVIEW PROCEEDINGS SEEKING ORDERS FOR CERTIORARI  
AND PROHIBITION**

**AND**

**IN THE MATTER OF THE DECISION OF OLOLULUNGA LAND DISPUTES TRIBUNAL  
CASE NO. 12 OF 31<sup>ST</sup> MARCH 2009 DELIVERED ON 8<sup>TH</sup> SEPTEMBER, 2009**

**AND**

**IN THE MATTER OF THE SUBSEQUENT ADOPTION OF THE SAID DECISION BY THE  
NAROK SPM'S COURT IN MISC. LAND NO. 24 OF 2009 ON 29<sup>TH</sup> SEPTEMBER 2009**

**AND**

**IN THE MATTER OF SECTION 8 AND 9 OF THE LAW REFORM ACT (CAP 26, OF THE  
LAWS OF KENYA)**

**AND**

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 8 OF 1990**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT, CAP 300 OF THE LAWS OF KENYA**

MIRIAM MARITIM.....1<sup>ST</sup>  
**RESPONDENT**

SENIOR PRINCIPAL MAGISTRATE, NAROK.....2<sup>ND</sup>  
**RESPONDENT**

**VERSUS**

MARGARET WANJIRU NGUGI.....INTERESTED  
**PARTY**

**RULING**

This Ruling relates to an application by way of a Notice of Motion dated and filed on 23<sup>rd</sup> November 2009, which sought two prayers -

- (a) *an order of certiorari to bring to this court and quash the decision of the Ololulunga Land Disputes Tribunal in case No. 31<sup>st</sup> March 2009 delivered on 8<sup>th</sup> September 2009 and subsequently adopted on 29<sup>th</sup> September 2001 by the Narok Senior Principal Magistrate Court in Misc. Land Application No. 24 of 2009.*
- (b) *an order of prohibition to prohibit the execution of the said decisions.*
- (c) *costs be provided for.*

The application was supported by the **Statement of Facts** dated 30<sup>th</sup> October, 2009 and the Affidavit Verifying the Facts sworn by the ex parte Applicant on 30<sup>th</sup> October, 2009. It was opposed by the Replying Affidavit of the Interested Party sworn on 26<sup>th</sup> April 2010 and filed in court on 27<sup>th</sup> April 2010.

The issue is whether this is one of those applications where the orders of certiorari and prohibition should be granted or otherwise.

An order of certiorari is one of the trio prerogative orders prescribed under Section 8 of the Law Reform Act, (*Cap. 26, Laws of Kenya*). The other two are **mandamus** and **prohibition**.

An order of certiorari is granted or issued to quash and nullify a decision of an inferior tribunal or a subordinate court on the grounds of either lack or excess of jurisdiction, or illegality, and operates to correct a wrong or an act which has already been done. The order of prohibition on the other hand is said to operate in the future to prohibit an illegal act being done or perpetuated.

In this application, the ex parte applicant claims a purchaser's interest in the parcel of land known as Title No. CISMARA/OLOLULUNGA/171 by the seller Daniel Ngugi (*deceased*) together with (*three others*),

and then comprising 160.0 (Ha) and now held by the Interested Party as Title Number CISMARA/OLOLULUNGA/12649 issued on 9<sup>th</sup> October, 2008.

The ex -parte applicant in her Replying Affidavit claims that she purchased approximately 3.7 acres for which she paid a total of Kshs 82,500/= in two installments of Kshs 65,000/= (*paid on 3<sup>rd</sup> August 1995*) and later Shs 17,000/=. She had intended to pay for 8 acres but the seller (*Daniel Ngugi*) died before she could pay him for more land.

The ex-parte applicant claims that unknown to her, and in unclear circumstances unknown to her, the Interested Party obtained title to the suit land and proceeded to file proceedings at the Ololulunga Division Land Disputes Tribunal and obtained orders on 8<sup>th</sup> September 2009 for the applicant's eviction from the suit land.

The Applicant claims that the Ololulunga Land Disputes Tribunal acted in excess of its jurisdiction by hearing and determining a dispute regarding ownership of land and issuing orders against the Applicant when it lacked powers to do so. The Applicant also claims that the Respondent's decision having been made in excess of jurisdiction is illegal, null and void and that the subsequent adoption thereof by the 2<sup>nd</sup> Respondent was rendered a nullity and ought not to be enforced.

The jurisdiction of Land Disputes Tribunals is both limited and restricted by Section 3 of the Land Disputes Tribunals Act 1990 (No. 18 of 1990) to settle disputes relating to-

- (1) *the division of land,*
- (2) *the determination of boundaries,*
- (3) *occupation or working on land,*
- (4) *trespass to land.*

The Interested Party claims both in her application to the Land Disputes Tribunal that the ex parte applicant was occupying her land and indeed occupation under Section 3(1)(c) of the Land Disputes Act is one area where a Land Disputes Tribunal has jurisdiction. The question is whether that jurisdiction entails giving orders of eviction? I do not, with respect, think so.

In my view, a purchaser or other person interested in the land and in possession and actual occupation has an overriding interest under Section 30(g) of the Registered Land Act, (Cap. 300, Laws of Kenya) and that interest does not require to be registered or noted in the Register (of Lands). That right subsists until there is inquiry as to the entitlement or otherwise to the suit land.

In my respectful view again, that inquiry relates to title, and Section 159 of the Registered Land Act aforesaid vests in the High Court, the jurisdiction to do so, or carry out such an enquiry, and therefore to make such orders as evictions from the suit land of any party to the dispute. A Land Disputes Tribunal is not vested with, and does not therefore enjoy that jurisdiction.

For those reasons, there shall be called and be brought to this court and be quashed by order of certiorari, the decision of the Ololulunga Division Land Disputes Tribunal made on 8<sup>th</sup> September 2009.

As the decisions of the Land Disputes Tribunal is quashed, the adoption thereof by the Principal Magistrate's Court in Misc. Land Application No. 24 of 2009 on 29<sup>th</sup> September 2009 is also quashed.

As an order of certiorari has been granted herein an order for prohibition does not lie.

I suspect that this Ruling will not be end of the dispute on the suit land. I therefore direct each party to bear its own costs.

There shall be orders accordingly.

**Dated, delivered and signed at Nakuru this 10<sup>th</sup> day of December 2010**

**M. J. ANYARA EMUKULE**

**JUDGE**