



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**Miscellaneous Application 82 of 2008**

**IN THE MATTER OF AN APPLICATION BY STANLEY MURUNGI TO APPLY FOR ORDERS  
OF CERTIORARI**

**AND**

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

**AND**

**IN THE MATTER OF MERU NORTH DISTRICT LAND DISPUTES TRIBUNAL AND IN THE  
MATTER OF LAND DISPUTES TRIBUNALS ACT NO. 18 OF 1990 AND IN THE MATTER OF  
MERU NORTH DISTRICT LDT 1G/17/08**

**REPUBLIC..... APPLICANT**

**VERSUS**

**MERU NORTH DISTRICT**

**LAND DISPUTES TRIBUNAL ..... RESPONDENT**

**GRACE MBERO**

**BEATRICE NDIGU**

**JOSEPH KIBWI.....INTERESTED PARTIES**

**EX – PARTE ..... STANLEY MURUNGI**

**JUDGMENT**

The *ex parte* applicant application dated 17<sup>th</sup> November 2008 is brought under Order LIII Rule 3 of the Civil Procedure Rules. The applicant seeks an order of *certiorari* to be issued to remove to this court the decision of Meru North District Land Disputes Tribunal dated 14<sup>th</sup> day of August 2008 and to quash the same. Before the hearing of that application, the interested parties filed a letter in this court on 17<sup>th</sup> December 2008 whereby they indicated that they were not intending to oppose the application. On the

day of hearing, learned counsel for the respondents also indicated that the application is not opposed. The indication from the interested parties and the respondents is quite right in law. This is because the dispute that the Land Dispute Tribunal entertained related to land owned by a deceased person. The Land Dispute Tribunal despite that fact proceeded to order that the land be divided amongst the interested parties. The Land Dispute Tribunal had no such jurisdiction under the Land Dispute Tribunal's Act. Section 3(1) of the Act provides the limits within which the Tribunal should exercise its jurisdiction. That section provides as follows:-

**“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.**

There is a line of authorities which clearly shows that the Land Dispute Tribunal has no jurisdiction to go beyond the provisions of that section. To name but one is the case of **Jotham Amunavi Vrs. The Chairman Sabatia Division Land Disputes Tribunal and Enos Kenyani Amunavi Civil Appeal No. 256 of 2002.** The Court of Appeal faulted the Tribunal for ordering the sub division of registered land into two parcels. The court stated as follows:-

**“It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, 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 tried by the High Court or by the Resident Magistrates' court in cases where such latter court has jurisdiction.”**

The Tribunal further erred because they dealt with property belonging to a deceased person whereas the Law of Succession Act clearly provides that no one can deal with the estate of a deceased person in the absence of a grant. It is clear that they had no jurisdiction in making the order they made. It has been said that jurisdiction is everything. In the case of **Owners of the Motor Vessel 'Lilian S' VRS. Caltex Oil** (Kenya) Ltd (1989) 1, page 14:-

**“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”**

I will allow the *ex parte* applicant application and order that an order of *certiorari* do issue to remove to this court the decision of Meru North District Land Dispute Tribunal dated 14<sup>th</sup> August 2008 in case No. LDT/1G/17/08 and quash the same. There shall be no orders as to costs.

Dated and delivered at Meru this 30<sup>th</sup> day of July 2009.

**MARY KASANGO**

**JUDGE**