



M'BARUA M'IRIA APPLICANT

VERSUS

JUSTUS MUTHURI BARUGAH 1ST RESPONDENT

JACOB KINYUA BARUGAH 2ND RESPONDENT

MERU CENTRAL DISTRICT

DISPUTE TRIBUNAL 3RD RESPONDENT

JUDGMENT

The *ex parte* applicant seeks an order of *certiorari* to issue calling and quashing the proceedings, findings, and award of Meru Central (now Imenti North) District Land Dispute Tribunal in LDT Case No. 04 of 2008 read in open court vide Meru CMCC LDT Case No. 30 of 2008 on 13th June 2008. The respondent did not oppose the application. The interested party's counsel relied on replying affidavit filed herein without further submissions. In that replying affidavit the interested parties stated that the Land Dispute Tribunal had jurisdiction to determine the disputes before it. This is an unfortunate matter. It involves a father, who is the *ex parte* applicant and two sons who are the interested parties. The dispute over the suit property did not begin with the now challenged decision of the Land Dispute Tribunal. It has been on going from what I can see in the documents that are annexed to the application. There has even been criminal cases between father and sons. The sons claim that their father at one time identified for each one of the five sons a portion of 5 acres each which they were to use. He allowed them to live and develop those five acres. Both the sons and the father agreed that portions of land were identified for each son but they disagreed on the amount of acreage of those portions. Unfortunately, although that was the dispute presented to the Land Dispute Tribunal, they however went off tangent and reached a decision which in my view, was not presented to them. They decided that the suit property was to be divided amongst the five sons each getting five acres and they further ordered that a buyer who was not a party to the action be awarded 6½ acres of the property. They stated that the balance was to remain in the name of the *ex parte* applicant. As I stated before, it was clear that the dispute that was presented to the tribunal by the sons was the determination of how much land each son was to occupy. The sons wanted determination of their occupation of that land. Had the Tribunal restrained itself within the limits of the dispute put before them, they then would have reached a decision that was within the terms of section 3(1) of the Land Dispute Tribunal Act. That section sets the limits of the Tribunal's 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.”

It is clear that the Tribunal exceeded that jurisdiction. The legislature in its wisdom limited the jurisdiction of the Land Dispute Tribunal as stated in the above section. I have however found going by the many matters referred to this High Court that the Tribunals have miserably failed to adhere to the limits of jurisdictions set for them and this has been the cause of numerous litigation all at the cost of parties who cannot be blamed for such breaches. Court of Appeal in the case of **Jotham Amunavi Vs. The Chairman Sabatia Division Land Disputes Tribunal & Anno.** Civil Appeal No. 256 of 2002 had this to say:-

“The implementation of the decision of the tribunal entails the sub-division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (see section 89 of the RLA). 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.”

In our case here, if the Tribunal decision was to be implemented, it would also entail the sub division of the *ex parte* applicant’s property. It is clear that the decision of the Meru Central (now Imenti North) Land Dispute Tribunal went contrary to the powers donated by section 3(1). There is no doubt in my mind that the prayers sought by the *ex parte* applicant are merited. I direct the Deputy Registrar of this court to supply a copy of this judgment to all the District Commissioners of the Meru Region for them to disseminate the contents hereof to the different District Land Disputes Tribunals and the Provincial Appeals Committees of the Eastern Region. The simple adherence to the law by the District Land Tribunals and the Provincial Appeals Committees will go a long way to assist the parties who appear before those tribunals. I do grant the following orders in this judgment:-

1. I hereby issue an order of certiorari calling and quashing the decision of Meru Central (now Imenti North) District Land Dispute Tribunal in LDT Case No. 04 of 2008 read in CMC LDT Case No. 30 of 2008 on 13th June 2008.

2. I will not order for payment of costs because the dispute herein involves father and sons.

Dated and delivered at Meru this 29th day of October 2009.

MARY KASANGO

JUDGE