



M'RINGERA M'MBWIRIA APPLICANT

VERSUS

THE DISTRICT COMMISSIONER

MERU CENTRAL 1ST RESPONDENT

KIMATHI M'RINGERA 2ND RESPONDENT

JUDGMENT

The 2nd respondent Kimathi M'Ringera sued the *ex parte* applicant who is his father. He sued him through CMCC No. 727 of 1996 Meru. His claim was that he was entitled to be given land by his father being parcel No. Abothuguchi/Katheri/2996. He sought from that lower court action that he be awarded half of that land. He argued that he was entitled to that land because his father had given his brothers land. By the judgment of the lower court, it was found that he was entitled to his claim and judgment was entered as prayed. The *ex parte* applicant moved by way of an appeal in the High Court and in that appeal the lower court's judgment was overturned. The 2nd respondent not being satisfied with that judgment referred the matter to Meru Central Land Dispute Tribunal. The decision of the Tribunal was as follows:-

“The boy was circumcised and got married at M'Ringera's home and yet he did not chase him. Therefore the panel of elders rule:- M'Ringera M'Mbwiria should give his son Kimathi M'Ringera 0.699 of an acre from parcel No. Abothuguchi/katheri/2996.”

That decision is the subject of the present judicial review matter. The *ex parte* applicant seeks an order of *certiorari* to call and quash that decision of Meru Central District Land Tribunal which was read in court on 26th August 2002. The *ex parte* applicant annexed to his application the green card of the parcel of land and it is clear that that parcel of land is registered in his name. The Tribunal did not have power to award that land to the 2nd respondent. The Land Dispute Tribunal Act does not afford the Tribunal such a jurisdiction. The Court of Appeal in the case of **M'Marete Vs. Republic & 3 Others (2004) eKLR**

Nyeri Civil Appeal No. 259 of 2000 regarding the Jurisdiction of the Tribunal had this to say:-

“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:-

- (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.”

Similarly in this case, the Tribunal exceeded its jurisdiction in awarding 2nd respondent *ex parte* applicant’s land. I therefore do find that the relief sought by the *ex parte* applicant is merited. I grant the following orders in this judgment:-

- 1. An order of certiorari is hereby issued to call for and quash the decision of Meru Central District Land Dispute Tribunal case No. 24 of 2002 awarding the 2nd respondent 0.699 of an acre of parcel No. Abuthuguchi/Katheri/2996.***
- 2. Since the parties in this dispute are relatives, there shall be no orders as to costs.***

Dated and delivered at Meru this 29th October 2009.

MARY KASANGO

JUDGE