



**MICHUBU BAARIU ..... EX PARTE APPLICANT**

**VERSUS**

**CHAIRPERSON, EASTERN PROVINCE LAND DISPUTES APPEALS COMMITTEE  
..... 1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**GERALD KIRIAMBURI ..... INTERESTED PARTY**

### **JUDGMENT**

The interested party hereinafter called Gerald filed a claim before the Land Dispute Tribunal Meru North where he claims that the *ex parte* applicant had occupied part of parcel No. Njia/Cia/Mwendwa/241. Gerald's land is Njia/Cia/Mwendwa/2303. His land is next to the interested party's land. Gerald stated before the Tribunal:-

***“The defendant (the ex parte applicant) has trans- positioned his land parcel and occupied mine hence forcefully enjoying my developments of several years. He trans-positioned himself using a sketch map that later was verified as fake. He has lived this lie for Hon. Tribunal to compel the defendant out of my land parcel (sic) and move to his rightful position as per the true and verified sketch mark that I produce to support my case.”***

In his defence before the Tribunal, the *ex parte* applicant whom I shall hereafter called Michubu stated that he bought his land in 1991 and after a dispute with Gerald's deceased father he compensated Gerald's said father for some miraa trees. Going by the statement of Gerald, the claim that was brought before the tribunal related to occupation and the boundary of the two properties of Gerald and Michubu. The Tribunal in its finding stated:-

***“The issue of this case is of trans-position. The plaintiff (Gerald) prays that the defendant be compelled to move out of the plaintiff's land parcel containing his development to his actual parcel***

**that according to the interpretation of the map borders the plaintiff's. The matter is basically an interpretation of the sketch map so that the aggrieved party may be allowed to enjoy the development on the parcel land. In view of the facts above, we rule that the district surveyor Igembe to interpret the map pertaining to the land parcels No. Njia/Cia/Mwendwa/2302 and Njia/Cia/mwendwa/241 and re-fix the boundaries and the positions of the same. The interpretation should be respected by the parties to the dispute."**

I make a finding that both the claim of Gerald and the decision of the Tribunal fell within the ambits of Section 3(1) of the Land Dispute Tribunal Act which is in the following terms:-

**"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."**

That section set out the jurisdiction of the Land Dispute Tribunals and the Provincial Appeals Committees. Michubu in his application for orders of judicial review to issue against that tribunal decision stated that the tribunal erred by his decision because the elders who made the decision were not the same as those who heard the dispute. I was unable to follow that argument because the typed proceedings of the hearing before the Tribunal show who were the panelists on the first page and the same panelists are the ones who signed the decision of the tribunal on the last page. The Tribunal's decision was the subject of an appeal before the appeals committee. Michubu before the appeals committee stated:-

**"Those who determined the case too, did not hear the case. The case was brought before the court before the judgment was made. I want this case to be heard again and finalized by the rightful panel members, also the land in dispute to be visited."**

But as I stated before, my finding is that the panelist who heard the dispute before the District Tribunal were the same ones who delivered its ruling. The basis upon which Michubu applied for an order of *certiorari* to issue to remove to this court the decision of the Eastern Province Land Dispute Appeals Committee are two; firstly he stated that Gerald lacked *locus standi* to bring the action before the Land Dispute Tribunal. He stated that this is because parcel no. 241 is registered in the name of Gerald's deceased father. In his argument, he said that Gerald needed to obtain a grant for his late father's estate to prosecute the claim. My response to that argument is that the claim of Gerald was mainly one of occupation. A claim for occupation of land does not need the support of a registered interest in land. An example is a tenant who has a right of quiet possession of land which he has rented. Such a tenant has the right of protection by the law when his possession is interfered with. A defence to such a right cannot be raised to the effect that the property is registered in another person's name. That I opine well answers the arguments raised by Michubu. Gerald had a right to bring an action relating to occupation of property owned by his deceased father even though he had not obtained the grant of letters of administration authorizing such an action. Secondly, the argument raised by Michubu was that the appeals committee decision was not dated as per section 3(8) of the Land Dispute Tribunal Act. That section provides as follows:-

**"The tribunal shall give reasons for its decisions, which shall contain a summary of the issues and the determination thereof, and which shall be dated and signed by each member of the tribunal."**

Gerald's counsel argued that to enforce strict procedures to the hearings before the Tribunals would be defeating the very purpose of the Act. He however pointed out that Michubu had in his notice of motion stated the date of the decision of the appeals committee. As correctly stated by Gerald's learned counsel, Mr. Karuti, the purpose of the Land Dispute Tribunal Act was to simplify the procedures on matters relating to dispute of land as per section 3(1) of that Act. The simplicity within which the legislature wanted the tribunal and parties to confine themselves is demonstrated by the fact that the filing of statement of claim involves the filing of a simple form and the defence is supposed to contain "*an answer containing reply to matters stated in the claim and a summary of the facts upon which he wishes to reply.*" See section 3(5) of the Act. And to ensure that the technicalities do not restrict the provisions of the Act, the rules of that Act specifically Rule 19 prohibits the appearance of advocate before the tribunal. The argument by Michubu that section 3(8) required the panelist to date and sign their decision in my view only applies to the tribunal and not to the appeals committee. In respect of appeals committee whose decision Michubu seeks to quash 8(7) provides:-

***"The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in a magistrate's court together with any positions or documents which have been taken or proved before the tribunal"***

The reading of that section clearly shows that there is no obligation on the appeals committee in dating their decision at all. That as it may be, from the annexed proceedings of the Eastern Province Land Dispute appeals committee, it is clear that the appeal was heard and determined on the same date. The panelist do not seem to have reserved their decision. That being so, the date of ruling is the date of appearing which date is reflected at the beginning of those proceedings. In the end, I find that Muchubu's application has no merit and I proceed to dismiss the notice of motion dated 13<sup>th</sup> October 2008 and costs are awarded to both the respondents and the interested party to be paid by the *ex parte* applicant.

Dated and delivered at Meru this 29<sup>th</sup> day of October 2009.

**MARY KASANGO**

**JUDGE**