



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT BUNGOMA  
Miscellaneous Civil Application 5 of 2007**

**REPUBLIC..... APPLICANT**

~VRS~

**THE CHAIRMAN, CHWELE LAND DISPUTES TRIBUNAL ..... RESPONDENT**

**EX-PARTE**

**JOTHAM SIMIYU WAMBEYE.....APPLICANT**

**AND**

**PROTUS KHAMALA BIKETI.....INTERESTED PARTY**

**RULING**

This is a ruling on the application dated 12<sup>th</sup> January, 2007 brought by way of Judicial Review seeking for orders of certiorari to remove into this court and quash the decision of Chwele Land Disputes Tribunal which was read and adopted as judgment of the court on 14<sup>th</sup> February, 2006 in Bungoma Senior Principal Magistrate Civil Case vide LDT Case No.50 of 2005. It is challenging the decision of Chwele Land Disputes Tribunal of ordering excise and transfer of 3 ½ acres from Bokoli/Mukuyuni/379 to the Interested Party. He contented that the tribunal acted in excess of its jurisdiction by interfering with the absolute rights of proprietorship conferred by section 27 and 28 of the Registered Land Act. The land was originally registered in the name of the deceased one Selina Nanjala since 1977 as shown by an extract of the register. Later it was inherited by the applicant and registered in his name. M/s Mukhongo submitted that the tribunal had no jurisdiction to deal with matters relating to title to land. It was also argued that the claim was time barred since the cause of action arose in 1982 when the Interested Party purports to have bought the land. The claim of the Interested Party was not against the Applicant but against third parties. The Applicant had not sold land to the Interested Party. The decision of the tribunal is therefore *ultra vires* and ought to be quashed by the court.

The Interested Party who was in person states in his replying affidavit sworn on 12<sup>th</sup> June, 2009 that he bought two acres of land out of Parcel No. Bokoli/Mukuyuni/379 from Jotham Simiyu Wambeye in exchange of his land parcel No. Bokoli/Chwele/453. Later he bought one quarter (1/4) acres from his neighbour making a total of 3 ¼ acres. He therefore filed his claim before a tribunal for an order for transfer of those portions into his name. He argues that the decision of the tribunal was correct in awarding him his land.

Section 3 (1) of the Land Disputes Tribunal Act provides:

**“ 1) Subject to this Act, all cases of a civil nature involving a dispute as to:**

**a) The division of, of 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.”***

The claim of the interested party before the tribunal was for the transfer of 3 ¼ acres out of Bokoli/Mukuyuni/379 registered in the name of the Applicant. In his evidence before the tribunal, the interested party said that he bought two acres from the father of the Applicant during his lifetime in 1975. In 1982, the father of the Applicant died leaving his sons who are Jotham Simiyu and James Wangila. The two brothers approached the Interested Party to move from the land sold to him by their late mother and settled on parcel no.379. He later bought ¼ of an acre making a total of 3 ¼ acres which they refused to transfer to him.

It is clear from the proceedings of the tribunal that, the land in issue was registered under the Registered Land Act Cap.300. Under section 159 of the Registered Land Act, proceedings relating to title to, or possession of land are triable by the High Court and the Resident Magistrate Court depending on the value of the subject matter. The jurisdiction of the tribunal is limited to disputes involving division of, or the determination of boundaries to land, a claim to occupy or work on land and trespass to land. The issues presented before Chwele Land Disputes Tribunal did not involve any of the disputes outlined in section 3 (1) of the Land Disputes Tribunal Act. The tribunal therefore proceeded to hear a dispute in which it had no jurisdiction.

The actions and the decision of the tribunal over the suit land were *ultra vires*. The award of the said tribunal which was adopted by Senior Principal Magistrate, Bungoma is hereby moved to this court and quashed accordingly. The application is therefore merited and it is allowed with costs to the Applicant.

**F. N. MUCHEMI  
JUDGE**

*Dated, Delivered and Signed at Bungoma  
This 10<sup>th</sup> day of October, 2009 in the presence of  
The Interested party and Mrs. Mukhongo for the ex-parte Applicant.*