



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MERU**

**Judicial Review 23 of 2009**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS IN THE  
NATURE OF CERTIORARI AND PROHIBITON**

**AND**

**IN THE MATTER OF MERU CENTRAL DISPUTES TRIBUNAL CASE NO. 43 OF 2008**

**AND**

**IN THE MATTER OF MERU CHIEF MAGISTRATE'S LDT CASE NO. 73 OF 2008**

**AND**

**IN THE MATTER OF LR. NOS. KIIRUA/RUIRI/4548 AND 4549**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE CHAIRMAN, MERU LAND DISPUTES**

**TRIBUNAL CENTRAL DISTRICT ..... 1<sup>ST</sup> RESPONDENT**

**THE MERU CENTRAL DISTRICT LAND**

**DISPUTES TRIBUNAL ..... 2<sup>ND</sup> RESPONDENT**

**LAWRENCE KITHIRA MUTHAMIA ... 1<sup>ST</sup> INTERESTED PARTY**

**MARGARET KAREGI MUTHAMIA ...2<sup>ND</sup> INTERESTED PARTY**

**EX PARTE ..... ERASTUS NGEERA**

**JUDGMENT**

What is before court in this judgment is the notice of motion dated 7<sup>th</sup> April 2009. The notice of motion seeks orders of judicial review, in particular, *certiorari* to bring and quash the decision of the Meru Central District Land Tribunal and an order of prohibition to prohibit the respondents from entertaining the dispute over parcel No. Kiirua/Ruiri/4549. The background of this matter is that M’Mugambi M’Itonga deceased was the owner of parcel No. Kiirua/Ruiri/93. He was survived by two sons. One is the *ex parte* applicant Erastus Ngeera and the other one is the late Sebastino who is not in these proceedings. By an order of this court the parcel of land number 93 was ordered to be sub divided with the *ex parte* applicant getting 10.40 acres and the late Sebastino 11 acres. The *ex parte* applicant did eventually get his title of that portion of land which is Kiirua/Ruiri/4549. The two wives of the late Sebastino moved to Meru Central District Tribunal seeking an order that they are entitled to occupy and work on the *ex parte* applicant parcel of land 4549. The Land Tribunal ruled that a surveyor should once again combine the *ex parte* applicant’s parcel of land with that of the late Sebastino and thereafter divide it into two portions horizontally. Had the tribunal ruled as to the applicant’s sought they would have been within the jurisdiction of the Land Dispute Tribunal Act and more particularly section 3(1). As it can be seen by their ruling, they effectively canceled the title of the *ex parte* applicant. The issue of the jurisdiction of the Land Dispute Tribunal has been the subject of much judicial decisions. It is clear from all the decisions that the tribunal has no jurisdiction to order cancellation of a title and sub division of the same as was ordered in this case. To mention but just one of such decision is the case of the Court of Appeal **Jotham Amunavi Vrs. The Chairman Sabatia Division Land Disputes Tribunal and Enos Kenyani Amunavi** High Court Civil Appeal No. 256 of 2002 where the court 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 Magistrate's court in cases where such latter court has jurisdiction."*

Section 3(1) of the Land Dispute Tribunal Act 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".*

Looking at the provisions from that section, I do find that Meru Central District Land Tribunal in case No. 43 of 2008 exceeded its jurisdiction and their said decision is *ultra vires* to the said section. Accordingly, the prayers that are sought by the applicant are merited. I grant the following orders:-

- 1. This court thus hereby issue an order of certiorari removing the respondent decision in case No. 43 of 2008 dated 30<sup>th</sup> October 2008 into this High Court and quashing the same.*
- 2. The respondent is hereby prohibited from further entertaining the dispute relating to the ownership of parcel No. Kiirua/Ruiri/4549.*
- 3. Since the parties in this matter are related, and because it was the tribunal that failed to abide by the jurisdiction provided under the Land Dispute Tribunal Act, I will order that each party do pay their own costs.*

Dated and delivered at Meru this 6<sup>th</sup> November 2009.

MARY KASANGO

**JUDGE**