

d) That the proceedings before chairman Kalama Land Disputes Tribunal are a nullity and an abuse of the court process.

e) That the Chairman Kalama Land Disputes Tribunal exceeded its jurisdiction by awarding land to the Interested Party contrary to the provisions of the Land Disputes Act and the said decision is ultravires the relevant provisions of law.”

3. I have seen the proceedings in the two land cases and the claimant was the present ex-parte Applicant who stated that he **“gave Mukonyo... 2 pieces of Land No. 294 and No. 295. The reason being [that] she left her husband and came to request for the land to cultivate and when the kids finishes school (sic)” she will give ... back the land...Mukonyo owns the land and has the Title Deeds. I confirmed with the surveyors it’s true she owns the land (sic).”**

4. The Interested Party Mukonyo Musyoki Masunzu in her evidence said that she purchased the two parcels of land from Mutiso Olo and one Kazwii and she produced documents so to show. After hearing witnesses for the parties, the Tribunal found as follows.

“This Land Tribunal members have ruled that as per the above points this plots (sic) Nos. 294 and 295 belongs to Mukonyo Masunzu”.

5. The cases for the ex-parte Applicant is that the Tribunal had no jurisdiction to determine the question as to the ownership of the two parcels of land and when it did so, it exceeded its mandate under section 3(1) of the Land Disputes Tribunals Act No. 18 of 1990. That therefore the decision was a nullity and should be quashed.

6. The Respondent Tribunal has filed no response to the Motion but the Interested Party has filed a Replying Affidavit sworn on 4.6.2008 and in it, she depones that the land parcels in dispute have always been her properties and she has had exclusive possession thereof. That it was the ex-parte Applicant who instituted the land cases under challenge and that the decision has since been adopted as a judgment of the **Machakos CM’s Court Civil Misc 48/2005**. That the present Application is therefore misguided and should be dismissed with costs.

7. Mrs Nzei Advocate for the Interested Party raised an issue regarding the fact that the ex-parte Applicant filed a Verifying Affidavit and a Supporting Affidavit, but a casual reading of Order LIII of the Civil Procedure Rules would show that there is no limit to the number of affidavits to be filed - see Order LIII Rule 4(1) – (3) as an example. In any event, whatever error the ex-parte Applicant may have fallen into cannot be fatal to the Application.

8. Mrs Nzei raised another issue which I consider fundamental however; as worded, the Motion only seeks that the decision of the Tribunal be quashed. There is no mention of the judgment of the Subordinate Court that was a product of the earlier decision. The court has not been enjoined in the present proceedings and its judgment is not challenged. Should that be a bar from this court investigating the decision of the Tribunal? I think not. I say so because that decision is before me and leave to challenge it was given earlier by another judge. The decision of the Magistrate’s Court is not before me and as *Khamoni, J.* said in **Wamwea vs Catholic Diocese of Murang’a Registered Trustees [2003] KLR 389**, where such a situation obtains, the court will only look to what is before it and leave the two separate and independent judgments as such.

9. This now brings to me to the decision being attacked. It is admitted that it was the ex-parte Applicant who invoked the jurisdiction of the Tribunal by filing his complaint before it. When he lost, he came to this court and now claims that the tribunal had in fact no jurisdiction. That is a common occurrence in our courts, a matter that *Khamoni, J.* in **Wamwea** (supra) found as symptomatic of an irrational society. He stated thus;

“These are parties who never raise objections on the ground of lack of jurisdiction on the part of Land Disputes Tribunals and Provincial Land Disputes Appeals Committees who entertain, hear and decide

every dispute relating to land taken before them (Tribunals and Appeals Committees lack of jurisdiction) notwithstanding. Of course the successful parties before Land Disputes Tribunals and Provincial Land disputes Appeals Committees hardly concede, even where they should, that there was lack of jurisdiction on the part of Land Disputes Tribunals and Land Disputes Appeals Committees and the whole situation becomes a good reflection of how irrational our society behaves so that it is the fluent, the flowery languaged, the loud mouthed, the sweet speaker, the orator, the cunning and the likes, who wins the day in the public eye however irrational he may be.”

10. In the present case, that fact was not strongly denied i.e jurisdiction. Whether or not the ex-parte Applicant initially approached the Tribunal makes no difference. That fact alone cannot confer jurisdiction where there is none. The claim by the ex-parte was one as to ownership of the two parcels of land in dispute and although the Tribunal may in fact have been merited in its eventual decision, it matters not because without jurisdiction, there is nothing it has done. Section 3(1) of the Land Disputes Tribunals Act provides as follows:-

“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.”

11. Once I have held that there was no jurisdiction and the Tribunal acted in excess of its mandate under section 3(1) above, there is little more to say and the order of certiorari must issue as prayed.

12. As to costs, clearly, the ex-parte Applicant is undeserving of any costs as he is the one who created the mess he now complains about. Let each party bear its own costs.

13. Orders accordingly.

Dated and delivered at Machakos this **16th** day of **October 2008**.

Isaac Lenaola

Judge

In the presence of: Mr. Makau for Applicant

Miss Musila for Interested parties

Isaac Lenaola

Judge