



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT MERU**

**MISC CIV APPLI 201 OF 2006**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF  
CERTIORARI AGAINST THE MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL**

**AND**

**IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA**

**N THE MATTER OF LAND DISPUTES TRIBUNAL ACT (ACT 18 OF 1990)**

**AND**

**IN THE MATTER OF MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL CASE  
NO.29 OF 2006**

**AND**

**IN THE MATTER OF LAND PARCEL NOS. ABOGETA/U-KITHANGARI/1430-434**

**BETWEEN**

**REPUBLIC.....**

**.....APPLICANT**

**V ERSUS**

**THE DISTRICT COMMISSIONER (As chairman Meru Central District**

**Land Disputes Tribunal).....1<sup>ST</sup>  
RESPONDENT**

**MERU CENTRAL LAND DISPUTES TRIBUNAL.....2<sup>ND</sup>**

**RESPONDENT**

**ROBERT MUTHOMI M'ITONGA.....INTERESTED  
PARTY**

**EX-PARTE**

## M'KWIRIGA M'KAARI a.k.a M'KWIRIGA KAARI

### RULING

1. The Applicant, M'Kwiriga M'Kaari also known as M'Kwiriga Kaari seeks leave to institute Judicial Review proceedings in the nature of certiorari to remove into this court and quash the decision of the 1<sup>st</sup> and 2<sup>nd</sup> Respondents for reasons that the Tribunal exceeded its mandate and decided a matter which was predicated on an alleged trust clothed as a claim for sub-division of land or a right to work on land.
2. The Applicant also seeks leave to institute proceedings for an order of prohibition to prohibit the 1<sup>st</sup> and 2<sup>nd</sup> Respondents from hearing any case and/or entertaining any dispute relating to the ownership of L.R. No. Abogeta/Upper Kithangari/1434. The reasons for seeking this order are not clear from the statement of facts or the grounds on the face of the Application but I gather that because of the way in which the 1<sup>st</sup> and 2<sup>nd</sup> Respondents treated the Applicant during the hearing of Meru LDT Case No. 29/2006 the Applicant has no faith in the ability of the said Respondents to properly handle any future disputes relating to the land parcel aforesaid.
3. The third prayer is one for the leave sought to operate as a stay.
4. I have read the Application and its statements of facts as well as the verifying Affidavit and its annexures. It is clear to me that the Applicant is the registered proprietor of the suit land and in LDT case No.29/2006 (Meru) the present Interested Party, Robert Muthomi M'Itonga was claiming ownership of the land not for himself but for his father, M'Itonga Kirahu who was said to be “insane” although it is recorded that he appeared before the Tribunal once. The claim that the true claimant was insane was neither authenticated nor proved at all but notwithstanding that fact, the Tribunal went ahead to award the Interested Party one hectare out of the land registered in the name of the Applicant.
5. Prima facie, the issues before the Tribunal cannot be matters envisaged by s.3 of the Land Disputes Tribunals Act and the Tribunal may have exceeded its jurisdiction. Matters of insanity of a claimant, the interests of his son, ownership of land and the entitlement of the son of an allegedly insane man to such ownership cannot be matters to be investigated by a Land Disputes Tribunal. This being my finding there is reason to grant leave to seek judicial orders of certiorari.
6. I have said above that it is unclear to me why orders of prohibition are being sought. If it is because there is no faith in the Tribunal, the answer lies in certiorari to quash if necessary the decision already made. If it is fear of further proceedings being handled by that Tribunal, I do not see the basis for that fear because the Tribunal has heard the matter and there is no sign that it will ever again be seized of the dispute. Whereas prohibition looks to the future, I do not see what purpose the said order will serve and I am not prepared to grant orders in vain. I shall refuse to grant leave as sought in that regard.
7. As for the prayer that any leave granted should operate as a stay, I agree there is much to be lost by a registered proprietor of land if a whole hectare is hived off from that land and the order in that regard may well be a nullity and amenable to quashing by this court. I am satisfied that there is cause to grant such an order.
8. Because I am dismissing prayer 2 of the Application dated 15.1.2007 and because the Application was otherwise brought timeously and properly within the provisions of order LIII of the Civil Procedures, I must as I hereby do allow prayers 1 and 3 thereof.
9. Costs shall be in the cause.

Dated, signed and delivered in open court at Meru this 7<sup>th</sup> Day of December 2007.

**ISAAC LENAOLA**

**JUDGE**

**In the presence of**

Mr. Mwitwa holding brief for Mr. Mwanzia Advocate for the Applicant

N/A/ Advocate for the Respondent

**ISAAC LENAOLA**

**JUDGE**