



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

**Misc Appli 205 of 2005**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW TO APPLY FOR  
ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL CASE NO. 60  
OF 2005**

**REPUBLIC.....  
.....APPLICANT**

**V E R S U S**

**1. THE CHAIRMAN MERU CENTRAL LAND DISPUTES TRIBUNAL.....1<sup>ST</sup>  
RESPONDENT**

**2. PETERO KAIMBI NJAO.....  
.....2<sup>ND</sup> RESPONDENT**

**M'MIRITI M'NJAU.....  
EXPARTE APPLICANT**

**JUDGMENT**

1. The Notice of Motion dated 16.3.2006 seeks orders as follows:

(i) This honourable court be pleased to grant Orders of Certiorari to quash the decision and award of the 1<sup>st</sup> respondent in Meru Central Land Disputes Tribunal Case Number 60 of 2005 as read to the parties in Meru Chief Magistrates Land Disputes Tribunal Case Number 93 of 2005.

(ii) That the cost of this application be provided for.

2. The Grounds in support are said to be that:

- (a) The elders exceeded their jurisdiction in incorporating in their award the transfer of Land Parcel Number ONTULILI BLOCK 1/KATHERI/127 to M'RINGERA M'NJAU who was not a party to the dispute and who is deceased and no legal representative was a party to the dispute or had claimed the said parcel of land.
- (b) The elders of the 1<sup>st</sup> respondent acted in excess of their jurisdiction in ordering the ex parte applicant to transfer 1 hectare of land parcel number ABOTHUGUCHI/KATHERI/1484 which land is registered in his name Under Cap 300 Laws of Kenya.
- (c) The award was not supported by the facts before it.
- (d) The elders of the 1<sup>st</sup> respondent exceeded their jurisdiction when they dealt with issues of trust, which can only be dealt with by a court of law.

3. When the Application came for hearing on 5.7.2006, counsel for the Interested Party, wrongly called the 2<sup>nd</sup> Respondent, Peter Kiambi Njau stated that he had no objection to the orders of certiorari being issued. The Respondent Tribunal although served never filed a response nor appeared in court.

4. I have seen the award being challenged. The Tribunal concluded the matter thus:

#### **“RULING**

**After very careful consideration...**

**1. All the land parcel – Ontulili Block 1 (Katheri) 127 be given back to M'Ringera M'Njau ID/NO. 0437622/63.**

**2. Petero Kiambi M'Njau ID/NO. 3283163 to get one hectare (1ha) of land from land parcel No. Abothuguchi/Katheri/1484, which is currently registered under M'Miriti Njau”.**

5. What the Tribunal in effect determined is that M'Ringera M'Njau is the rightful owner of Ontulili Block 1 (Katheri) 127 and that the interested party should get one(1) acre out of the land parcel No. Abothuguchi/Katheri/1484 which land they also found is registered in the names of the ex-parte Applicant.

6. The Tribunal's mandate over land is limited to those questions set out in s.3(1) of the Land Disputes Tribunals Act and these are:

(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.

7. The Tribunal has no jurisdiction where the substance of the dispute is ownership or proprietorship of land registered in the names of a person who appears or does not appear before it in its deliberations. This is the situation that obtained here and once the Tribunal purported to grant ownership in one instance and revoke proprietorship in another, its jurisdiction was clearly exceeded and the power of this court to issue orders of certiorari can be called upon in the manner done by the ex-parte Applicant.

8. Without saying more and since the Interested Party who was a beneficiary to the orders of the Tribunal so agrees, the Application dated 16.3.2006 is allowed in terms of prayer 1 thereof.

9. The nature of the Application and the fact that it is not opposed would incline me to make an order that each party should bear its own costs.

7. Orders accordingly.

**Dated, signed and delivered in open court at Meru this 26<sup>th</sup> day of September 2006.**

**ISAAC LENAOLA**

JUDGE

In Presence of

Mrs. Ntaragwi Advocate for the Applicant

N/A Advocate for the Respondents

**ISAAC LENAOLA**

JUDGE