



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**JUDICIAL REVIEW APPLICATION NO. 14 OF 2011**

**IN THE MATTER OF AN APPLICATION BY ELIUD WANDERA MUHILA TO APPLY FOR  
JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990 IN THE LUGARI  
LIKUYANI DIVISION LAND DISPUTES TRIBUNAL AWARD NO. 10 OF 2011 AND BUTALI  
SENIOR RESIDENT MAGISTRATE CIVIL APPLICATION NO. 4 OF 2011**

**BETWEEN**

REPUBLICIC .....APPLICANT

**AND**

**THE CHAIRMAN, LUGARI/LIKUYANI**

**DIVISION LAND DISPUTES TRIBUNAL ..... RESPONDENT**

**VERSUS**

1. ZAINA NAFULA INYIMBA MUHILA
2. FRANCIS WANDERA MALIONGOBI
3. RAMADHAN MAULIDI ..... INTERESTED PARTIES
4. SALILM HAMISI

**EX-PARTE**

**ELIUD WANDERA MUHILA**

**RULING**

Before me is a Notice of Motion filed on 10th May, 2011 under **Order 53 rule 2** of the Civil Procedure Rules as well as **Section 8 & 9** of the Law Reform Act (Cap. 26). It was filed through the applicant's advocate, Ms J. J. Mukavale Advocate after leave was granted on 14th April, 2011.

The prayers in the Notice of Motion are a request for orders of certiorari to quash the decision of the Lugari Land Disputes Tribunal No. 10 of 2011 which was filed in Butali Senior Resident Magistrate's court as Civil Misc. Appl. No. 4 of 2011. It was also sought that costs of the application be provided for.

The application was grounded on the **verifying affidavit** of the applicant and the **statement of facts** which were filed with the application for leave. Though the substantive Notice of motion was filed with a supporting affidavit sworn on 5th May 2011, that was a mistake. In judicial review proceedings brought under Order 53 of the Civil Procedure Rules, the documents to be relied upon are only those filed with the Chamber Summons for leave, unless leave is granted by court to file further documents by the applicant. I will ignore the said affidavit, as no leave was obtained to file the same.

The application is opposed. Though there is no response filed in opposition to the application, three of the interested parties Francis Wandera, Ramadhama Maulidi and Zaina Nafula, appeared in court at the hearing and opposed the application verbally.

This application will be allowed because on a major defect of the composition of the membership of the Land Disputes Tribunal which made the decision which was adopted by the Magistrate's court. As rightly pointed out by counsel for the applicant, which has not been challenged by any of the respondents, the members who sat at the Tribunal were three that is Protus Wabwire, Jotham Kisengo and Major Rtd. Adriana Akweywa.

The membership of the Land Dispute Tribunal for Lugari area in Western Province was gazetted by the Minister through gazette notice number 1507-1516 in the Kenya Gazette of 19th June 2009. Of the three members who sat in the matter in issue herein, only Major Rtd. Adriana Akweywa was so gazetted. The other two were not gazetted as members of the Tribunal. They therefore had no business in purporting to sit as members of the Land Disputes Tribunal. They could not legally hear land disputes, and determine or make decisions the way they purported to do. Those who determined this matter did not constitute a Tribunal. No Tribunal therefore sat to determine the land issue therein.

Irrespective of the merits of the decision reached, since there was no legally constituted Tribunal convened, there was no decision of a Tribunal as envisaged under the Land Disputes Tribunal Act. The purported decision made could therefore not be adopted by the Subordinate Court, since there was no decision of the Land Disputes Tribunal. The purported decision has to be quashed.

On the above basis alone, this application must succeed. The application will therefore be allowed. I allow the application and grant the Certiorari orders sought. The interested parties, who appeared at the hearing and opposed the application, that is Zaina Nafula, Francis Wandera and Ramadhama Maulidi will pay the applicant's costs of the proceedings herein.

***Dated and delivered at Kakamega this 13th day of February, 2014***

**George Dulu**

**J U D G E**