



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CIVIL MISC. APPLICATION NO. 231 OF 2001**

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF IKUTHA LAND DISPUTES TRIBUNAL CASE 82 OF 2000**

**REPUBLIC.....APPLICANT**

**VERSUS**

**IKUTHA LAND DISPUTES TRIBUNAL.....RESPONDENT**

**AND**

**JULIUS KYALO PAUL.....INTERESTED PARTY**

**JAMES KASINA NDAMBU.....EX PARTE APPLICANT**

**RULING**

1. The application dated 17/8/2001 seeks orders that:

**1. That an order of certiorari do issue to remove to the High Court the decision of the Ikutha Land Disputes Tribunal in Civil Case No. L. 82/2000 delivered on 1<sup>st</sup> February 2001 for the purpose of quashing the said decision.**

**2. That costs of this application be paid to the *ex parte* Applicant.”**

2. According to the statement of facts and the verifying affidavit, the **Ikutha Land Disputes Tribunal** in decision dated 1/2/2001 in respect of **Land Case No. 82 of 2000** between the *ex parte* Applicant (herein after Applicant) and the Interested Party, the Tribunal awarded the Interested Party the disputed land. It is further averred that the Tribunal was not properly constituted as the dispute was heard by four elders among them one **George N. Mbuli** who was not a gazetted elder. The *Ex parte* Applicant also complained that the boundary was not fixed by the elders but by the Interested Party in the Applicant's absence.

3. The application is opposed by the Interested Party as per the replying affidavit sworn on 31/10/2008. According to the Interested Party, the proceedings of the **Land Disputes Tribunal** were conducted

regularly by a panel of three elders who were gazetted. That the Tribunal was within its mandate to determine the boundary dispute.

4. The application was canvassed by way of written submissions which I have duly considered.

5. The proceedings before the **Land Disputes Tribunal** reflects the elders who constituted the same as follows:-

- **Mr Paul K. Munyalo**
- **Paul M. Mutinda**
- **George N. Mbuli**
- **William M. Kizamwa**

The Tribunal's decision was then signed by three of the elders except **Mr George N. Mbuli**.

6. The Tribunal's composition contravened **section 4 (2)** of the **Land Disputes Tribunal Act** which provides as follows:-

**“4 (2) Each Tribunal shall consist of-**

**a. a chairman who shall be appointed from time to time by the District Commissioner from the panel of elders appointed under section 4; and**

**b. either two or four elders selected by the District Commissioner from a panel of elders appointed under section 5.”**

7. The inclusion of **Mr George N. Mbuli** whose name does not appear as a gazetted elder for **Kitui District** as per **Gazette Notice No. 5523 of 05.11. 1993** contravened **section 5 (1)** of the **Land Disputes Tribunal Act** which provides as follows:-

**“The Minister shall, by notice published in the Gazette, appoint a panel of elders for each registration district.”**

8. The **Tribunal** in its decision awarded the disputed land to the Interested Party, **Kyalo Paul**. This was a decision on ownership of land. The decision was outside the mandate of **section 3 (1)** of the **Land Disputes Tribunal Act** which provides as follows:-

**“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.”**

9. The Tribunal in its letter dated 19/9/2001 addressed to the parties allowed a third party described as the “bearer” of the letter to mark the boundary path. There is no provision in the **Land Disputes Tribunal Act** for the elders to delegate their responsibilities. There is no record of any proceedings to show how the boundary was fixed. This gives credence to the contention by the Applicant that he was not present when the boundary was marked. This further connotes failure to observe the rules of natural justice.

10. With the foregoing, the application has merits and I allow the same as prayed. Due to the circumstances of this case, each party to meet own costs.

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**B. THURANIRA JADEN**

**JUDGE**

Dated and delivered at Kitui this **12<sup>th</sup>** day of **June** 2014.

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**B. THURANIRA JADEN**

**JUDGE**