



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MALINDI**

**Miscellaneous Civil Application 34 of 2008**

**HENRY DHURYA MENZA .....PLAINTIFF**

**-VS-**

**MALINDI LAND DISPUTES TRIBUNAL**

**THE PRINCIPAL MAGISTRATE, MALINDI .....DEFENDANTS**

**REASONS FOR THE JUDGMENT DELIVERED ON 29<sup>TH</sup> JUNE, 2012**

1. HENRY NDURYA MENZA the exparte applicant herein moved this court through Judicial Review Proceedings seeking an order of certiorari to remove to this court for purposes of quashing, the award in the Malindi Disputes Tribunal in Land Dispute No. 25 of 2008 between KAKA MOHAMED, on the one part, and KASENA MENZA NDURYA, KARISA KASENA MENZA, KAHINDI TSANJE, KASHURU TSANJE AND CHARO TSANJE on the other hand; and the judgment of the Principal Magistrate in Malindi adopting the said award.

2. The grounds upon which the application was brought can be summarised as follows:

a) The decision of the Malindi Disputes which it is sought to impugn was made without jurisdiction and is therefore null and void, together with the resultant judgment of the Principal Magistrate, Malindi.

b) The claim before the said tribunal was incompetent as it was brought against the late KASENA MENZA NDURYA rather than the legal administrator of his estate.

c) The Interested Party KAKA MOHAMED the claimant in the dispute before the Land Dispute Tribunal lacked authority to bring action on behalf of the estate of the late Kaingu Rasi.

d) The subject matter of this dispute is Land Parcel No. LR KAKUYUNI/MADUNGUNI/94. When the matter came up for hearing on 13<sup>th</sup> October, 2011, the parties agreed to dispose of the application by way of written submissions. And having perused the said submissions alongside all the material in respect of the application, I take the following view.

This application turns on one issue alone, that of jurisdiction of the Land Disputes Tribunal.

4. The applicant's counsel Mr. Okuto has strongly argued that the Land Disputes Tribunal Act from which the Malindi Tribunal drew its authority did not donate power to deal with title to land as it purported to do in this case. In support of his arguments, Mr. Okuto cited two authorities, namely:-

1. **Muriuki Marigi vs Richard Marigi Muriuki and 2 others (1997)e KLR** wherein the Court of Appeal stated inter alia:

***“we earlier set out the provisions of Sections 27 and 28 of the Registered Land Act which in effect state that the rights of a registered proprietor of land registered under the Act are absolute and indefeasible and only subject to rights and encumbrances noted on the register or overriding interests which are set out in Section 30 of the Act.”***

2. **Kuria Greens Ltd vs. Registrar of Titles and another (2011)e KLR**

5. The Interested Parties' answer to the jurisdiction issue was a muted restatement of the alleged jurisdiction of the tribunal. He also pointed out the applicant's alleged failure to raise the said objection at the tribunal. The first annexure to the applicant's verifying affidavit (HN2) clearly shows that the suit property was registered in the names of the deceased KASENA MENZA NDURYA on 12<sup>th</sup> October, 1992. The record of proceedings leave no doubt that the tribunal took upon itself jurisdiction it did not have; namely, to determine the rightful owner of the suit property. It rendered its decision in the following terms: (*inter alia*):

***“There is enough evidence to conclude that the objector owns the land illegal(ly)... MALINDI LAND DISPUTE TRIBUNAL enters for the claimant against the objectors and makes the following orders:-***

***1. THAT the objections to surrender the land to the claimant KAKA MOHAMED and be registered in his name and to vacate the land in three months' time (sic).”***

6. The powers the tribunal purported to exercise in so ordering are vested in the High Court under Section 143 of the Registered Land Act (now repealed). Hence, the Tribunal's decision is patently *ultra vires* and the subsequent judgment of the Principal Magistrate, Malindi, a nullity. The Interested Party took a stab at the alleged lack of "*locus standi*" by the applicant, not having been a party to the initial proceedings before the tribunal. This objection cannot stand in light of the Applicant's annexure HBI, a grant *ad litem* in the applicant's favour. Even though it is temporary in nature as provided under the Law of Succession Act, it is sufficient for the present purpose.

For the foregoing reasons, I was satisfied that the Exparte Applicant was competent to bring this action and that the same was merited.

Delivered and signed at Malindi this 2<sup>nd</sup> day of **July, 2012** in the presence of: Mr. Okuto for applicant. Interested Party – No appearance. Court clerk - Evans/Leah.

**C. W. MEOLI**  
**JUDGE**