



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**Miscellaneous Civil Application 180 of 2006**

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

**AND**

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT (NO. 18 OF 1990)**

**AND**

**IN THE MATTER OF MERU CENTRAL LANDS DISPUTES TRIBUNAL CASE NO. 90 OF 2005**

**AND**

**IN THE MATTER OF LAND PARCEL NO. ABOOTHUGUCHI/KIAMURI "A" 611**

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

**VERSUS**

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

**MERU CENTRAL DISTRICT LAND DISPUTE TRIBUNAL .....2<sup>ND</sup> RESPONDENT**

**JOHN RIUNGU M'MUTEA ..... 3<sup>RD</sup> RESPONDENT**

**(REP GAMPOGO CLAN)**

**DANIEL KAMAKIA KIANGURA ..... EXPARTE**

**JUDGMENT**

The *ex parte* applicant by Notice of Motion dated 8<sup>th</sup> November 2006 seeks for an order of *certiorari* to issue to remove into this court the Meru Central Land Dispute Tribunal case No. 90 of 2005 and quash its proceedings and award. Although the applicant also sought an order of prohibition, I am of the view that the same is superfluous. The applicant based his application on the grounds that he is the registered owner of parcel No. KIAMURI "A"/611 for which he has a title under the Registered Land Act Cap 300. That the award of the Tribunal took away the applicant's said land and gave it to Gampogo clan. The applicant argued that the said award was ultra-vires, null and void, was against the applicant's constitutional rights and ought to be quashed. The 3<sup>rd</sup> respondent in his replying affidavit deponed that the Tribunal's award was fair and just. He proceeded to state that the applicant's registration as the owner of the suit property was questionable. Further that the applicant had other parcels of land. The 3<sup>rd</sup> respondent may very well be right that the applicant's acquisition of the suit property was questionable or that he had other parcels of land but the applicant's contention that the tribunal's award was ultra vire is with merit. The Tribunal finds the limits of its jurisdiction in section 3(1) of the Land Dispute Tribunal Act (the Act). Under that section the Tribunal is only empowered to decide matters relating to "the division of, or determination of boundaries to land, including land held in

common; a claim to occupy or work land; or trespass to land.”

That being the limit within which the Tribunal is empowered to hear dispute in this case, the tribunal exceeded that jurisdiction. They essentially by their award ordered the rectification of the register by ordering that it be registered in the name of Gampogo clan and for the applicant’s registration be cancelled. There are many decisions of both the High Court and the Court of Appeal where it has been held that the Tribunals are not empowered by the Act to order the rectification of title. To state but a few:-

**(i) Civil Appeal No. 256 of 2002 - Jotham Amunavi = And = The Chair Sabatia Division Land Dispute Tribunal And Others.** In this case the Court of Appeal found:-

**“The implementation of the decision of the Tribunal entails the sub-division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (see section 89 of the RLA). It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3 (1) of the Land dispute Tribunal Act. By section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrates’ Court in cases where such latter court has jurisdiction.”**

**(ii) HC MISC. APP. NO. 314 OF 2004**

**Nyandurua District Land Dispute Tribunal = And = Meshack Mwangi Maina and Another,** the high Court had this to say:-

**“.....to carry out the orders of Maragua Divisional Land Disputes Tribunal and/or the Provincial Land Disputes Tribunal Appeals Committee would result in the rectification of the register which goes against the spirit of section 143 of the Registered Land Act when conditions laid down in that section for such an order to be made were not shown to exist in this case.”**

**(iii) HCC Misc. App. No. 689 of 2001**

**Republic – Versus – Kajiado Land Dispute Tribunal & Another.** The court stated:-

**“The court has no hesitation in stating that under section 3 of the Land Dispute Tribunal Act the Kajiado Lands Tribunal (sic) had no jurisdiction to adjudicate on ownership of registered land. The award was ultra-vires the Act .....It follows that both the award and the purported entering of the judgment in terms of the award were nullified. This is so because the maximum ex nihilo nilil fit applies – “out of nothing comes nothing”. The High Court has a supervisory role to play over inferior tribunals and courts and it would not be fit to abdicate its supervisory role.”**

I believe I have stated enough to show that the Tribunal’s award was ultra vires and accordingly that the applicant’s application is merited.

The judgment of the court is that the applicant’s application by Notice of Motion dated 8<sup>th</sup> November 2006 is allowed that an order of *certiorari* do issue to remove into this court and quash the decision/award of Meru Central Land Dispute Tribunal Case No. 90 of 2005. The costs are awarded to the applicant as against the third respondent.

Dated and delivered at Meru this 9<sup>th</sup> day of July 2009.

**MARY KASANGO**

**JUDGE**