



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

Miscellaneous Civil Application 304 of 2008

REPUBLIC..... APPLICANT

VRS

THE CHAIRMAN CHWELE LAND DISPUTES TRIBUNAL.....RESPONDENT

EX-PARTE

MOSES BUNGUSWA APPLICANT

AND

SIMON SIAMONI MUSA INTERESTED PARTY

RULING

This is a ruling brought by way of judicial review dated 14/10/2008. It seeks for orders of certiorari and prohibition to remove into this honourable court and quash the award of Chwele Land Disputes Tribunal declaring that the registration of **L. R. No.BOKOLI/CHWELE/767** in the names of MOSES BUGUSWA MWANJA be revoked and subdivided into two portions which award was adopted as court judgment in Bungoma LDT No.38 of 2005 on 4/1/2006. The Applicant Moses Buguswa depones in his affidavit sworn on 14/10/2008 that land reference **No.BOKOLI/CHWELE/767** was bought by his father in 1968 from one Walela Yona. The Applicant who is the eldest son and on request by his father helped him to raise the purchase price. The land measuring 3.4 acres was registered in the name of the Applicant. On 5th of March 2005 the interested party, Simon Siamoni Musa filed a claim before Chwele Land Disputes Tribunal together with Applicant's father claiming half portion of the land. The tribunal awarded him half portion of the land by ordering sub division of the original parcel. The said award was confirmed as judgment of the court in Bungoma on 4/12/2006. It is the contention of the Applicant that the tribunal had no jurisdiction to arbitrate the matter.

The Respondent and the interested party were being served with the application but did not file any papers in response. The application therefore proceeded unopposed. This court has the duty or determining whether the Chwele Land Disputes Tribunal had jurisdiction to arbitrate on the claim. The jurisdiction of the tribunal is provided for under section 31 of the Land Dispute which provides as follows:

“1)Subject to this Act, all cases of a civil nature involving a disputes 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; shall be heard and determined by a tribunal established under section 4.”*

Section 4 which establishes the tribunal, including the tribunals composition states in sub section (1):

“There shall be established a tribunal, to be called the Land Disputes Tribunal, for every registration district.”

The jurisdiction of the tribunal is derived from section 159 of the Registered Land Act (300) and the relevant part states as follows:

“Section 159 civil suits and proceedings relating to the title to, or possession of, land shall be tried by the High Court and where the value of the subject matter does not exceed twenty five thousand pounds by the Resident Magistrate’s Court, or where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunal Act, in accordance with that Act.”

The dispute involved land parcel **No. BUNGOMA/KABISI/765** which was registered under the Registered Land Act as shown by the application of official search and copy of title annexed to the application.

The claim of the interested party before the Chwele Land Disputes Tribunal was for half portion of **L.R.NO.BOKOLI/CHWELE/767** which was registered in the names of Moses Buguswa Mwanja the Applicant herein. The tribunal ordered the Land Registrar and the District Surveyor, Bungoma to cancel the registration of the Applicant as proprietor of Bokoli/Chwele/767 and subdivide it into two portions. One to be registered in the name of the interested party while the Applicant maintains the other half.

It is clear from the proceedings of the tribunal that the land in issue was registered under the Registered Land Act Cap.300. Under section 159 of the Registered Land Act, proceedings relating to title to, or possession of land are triable by the High Court and the Resident Magistrate Court depending on the value of the subject matter. The jurisdiction of the tribunal is limited to disputes involving division of, or the determination of boundaries to land, a claim to occupy or work on land and trespass to land. The issues presented before Chwele Land Disputes Tribunal did not involve any of the disputes outlined in section 3(1) of the Land Disputes Tribunal Act. The tribunal therefore proceeded to hear a dispute in which it had no jurisdiction.

The actions and the decision of the tribunal over the suit land were *ultra vires*. The Applicant has satisfied the court that the tribunal acted without jurisdiction in hearing the said dispute. The award of the said tribunal which was adopted by CM, Bungoma is hereby moved to this court and quashed accordingly. The application is therefore merited and it is allowed with costs to the Applicants.

F. N. MUCHEMI

JUDGE

Dated, Delivered and Signed at Bungoma

This 7th Day of July 2009 in the presence of Mr. Kituyi for applicant.