



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

**Miscellaneous Civil Application 157 of 2006**

**REPUBLIC ..... APPLICANT**

**VRS**

**THE CHAIRMAN,**

**SIRISIA LAND DISPUTES TRIBUNAL ..... RESPONDENT**

**EX-PARTE**

**ZEBEDAYO WEPUKHULU OPICHO ..... APPLICANT**

**AND**

**DAVID WEKESA MULONGO ..... INTERESTED PARTY**

**RULING**

The Applicant Zebedeyo Wepukhulu Opicho has applied by way of Judicial Review in his application dated 1<sup>st</sup> July, 2008 for orders of certiorari to remove into this court and quash the proceedings and the decision of Sirisia Land Disputes Tribunal which was read and adopted as judgment of the court on the 6<sup>th</sup> February, 2006 in Bungoma SPM CC L.D.T. No.35 of 2005. The grounds supporting the application are contained on the face of the application and the Applicant's supporting affidavit sworn on 1/7/2008. It is the contention of the Applicant that the tribunal had no jurisdiction to entertain the dispute of a land registered under the Registered Land Act, Cap.300. The tribunal acted in excess of its jurisdiction by ordering that the Applicant surrenders 2 acres of land to the interested party. The interested party David Wekesa Mulongo is the son of one John Mulongo the brother of the Applicant who is now deceased. The Applicant and the deceased had inherited equal portions measuring 6.5 acres from their deceased father. In 1963, the deceased sold his portion to the Applicant and full consideration was paid. The deceased then moved to stay in Uganda. During land adjudication in 1968, the two parcels were consolidated and registered in the name of the Applicant. The Applicant filed a claim before Sirisia Land Disputes Tribunal in 2004 claiming a portion of the Applicant's land. The tribunal ordered that he gets 2 acres from the said land which award was adopted as judgment by Bungoma court.

The application was not opposed by the Respondent and the interested parties. The issues before this court is to decide whether the tribunal had jurisdiction to arbitrate on the dispute. From the proceedings of the tribunal the interested party was claiming a portion of *L.R. NO.SOUTH MALAKISI/NORTH KULISIRU/478*. The land in issue was registered under Cap.300 which confers upon the proprietor or rights and privileges pertaining to ownership

The jurisdiction of the tribunal is provided for in section 3(1) of the Land Disputes Tribunal Act No.18 which provides as follows:

*“1)Subject to this Act, all cases of a civil nature involving a dispute as to:*

- i. 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 issue before this court is to determine whether the Sirisia Land Disputes Tribunal had the jurisdiction to determine the dispute before it. The dispute involved land parcel *L.R. NO.SOUTH MALAKISI/NORTH KULISIRU/478* which was registered under the Registered Land Act as shown by the application of official search annexed to the application.

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 trace pass to land. The issues presented before Sirisia 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 SPM, 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. Situma for Ex parte applicant.*