



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**MISCELLANEOUS CIVIL CASE 214 OF 2003**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF  
CERTIORARI AGAINST THE MERU SOUTH DISTRICT LAND DISPUTES TRIBUNAL**

**AND**

**IN THE MATTER OF LAND PARCEL NO. BLOCK 1 NO. 36A KAMUTIRIA ADJUDICATION  
SECTION**

**AND**

**IN THE MATTER OF CHUKA SRM CC LDT NO. 21 OF 2003**

**AND**

**IN THE MATTER OF LAND DISPUTES CASE NO. IGA 7 OF 2003 KAMUTIRIA/KAJUKI  
REPUBLIC ..... APPLICANT**

**VERSUS**

**THE DISTRICT COMMISSIONER (AS CHAIRMAN MERU SOUTH DISTRICT**

**LAND DISPUTES TRIBUNAL )..... 1<sup>ST</sup> RESPONDENT**

**THE LAND DISPUTES TRIBUNAL IGAMBA NGOMBE DIVISION ...2<sup>ND</sup> RESPONDENT**

**BONFICE NJUE ..... 3<sup>RD</sup> RESPONDENT**

**NJAGI RUCHIANA & BROTHERS ..... EX PARTY APPLICANTS**

**JUDGMENT**

The *ex parte* applicant is before this court with a notice of motion dated 3<sup>rd</sup> December 2003. By that motion, brought under Order LIII Rule 3(1) of the Civil Procedure Rules seeks an order of *certiorari* to bring to this court a decision dated 14<sup>th</sup> May 2003 of the Meru South District Land Dispute case No. 7 of 2002 and which was adopted in Chuka RMDT Case No. 21 of 2003 and quash the same. The *ex parte*

applicant by his verifying affidavit stated that he and his brothers have been in occupation of land parcel Block 1 No. 36 A KAMUTIRIA Adjudication Section from their childhood. That his father and forefather dwelt on that land. In 1992 he stated that the third respondent with connivance of the land administration officers curved out part of that land. The *ex parte* applicant filed a dispute before the Land Dispute Tribunal being case No. 7 of 2002. The decision of the tribunal was delivered on 14<sup>th</sup> May 2003. The tribunal gave the following decisions:-

***“The shamba belongs to Boniface the (defendant) and Njagi (plaintiff) should vacate the shamba of Njue and tell his family members also to vacate from the shamba of Njue.”***

The third respondent moved the Chuka Magistrate court whereby that decision was made a judgment of the court. The Chuka court also issued an injunction order restraining the *ex parte* applicant from cutting trees, tilling the land or doing any development on the suit property until the hearing and the determination of an appeal filed by the *ex parte* applicant before the appeals committee. The argument of the *ex parte* applicant is that the Land Dispute Tribunal had no jurisdiction to entertain the matter because the suit property was an adjudication area and accordingly the jurisdiction of anything may with the adjudication officer as per the Land Adjudication Act Cap 284. The 3<sup>rd</sup> respondent in his replying affidavit was of the view that the Land Dispute Tribunal had jurisdiction. He was also perturbed by the fact that it was the *ex parte* applicant who filed the dispute before the Land Tribunal and on losing the claim had come to this High Court alleging that the Tribunal had no jurisdiction. Indeed he was concerned by the many other suits that the *ex parte* applicant had subjected him to in respect of the suit property. Additionally, the respondent stated that on losing before the Land Tribunal the *ex parte* applicant had filed an appeal before the appeals committee which appeal had not been determined by the time he moved this court for judicial review orders. In considering this matter, and in going through the court file, I came across a letter written by the District Land Adjudication/Settlement Officer Meru South District. That letter is important to be considered in this judgment. It is in the following terms:-

**“RE: MERU HIGH COURT MISC. APPEAL NO. 214 OF 2003 COMMISSIONER (CHAIRMAN MERU SOUTH DISTRICT LAND DISPUTE TRIBUNAL) & OTHERS**

***I am informed that the above case is before your honourable court. The case concerns a land in Kajuki/Kamutiria which is a land adjudication section established under section 5(1) (a) of the Land Adjudication Act Cap 284 Laws of Kenya.***

***In accordance to section 30(2) of the Land Adjudication Act Cap 284 the above mentioned case should be discontinued to enable this Department arbitrate the dispute through tribunals provided for in the same Act.***

**S.M. NYAKORIA**

**DISTRICT LAND ADJUDICATION/SETTLEMENT OFFICER**

**MERU SOUTH DISTRICT”**

From that letter it is clear that the suit property is an adjudication area and the jurisdiction of any claim of such an area is well provided for in Cap 284. The land Dispute Tribunal Act has jurisdiction over agricultural land. However, it does not have jurisdiction over land declared under Adjudication Act. That is well captured in the definition section of the Act which is as follows:-

***“Land” means “Agricultural land” as defined in section 2 of the Land Control Act, whether or not registered under within an adjudication section declared under the Land Adjudication Act or the Land Consolidation Act or land which is the subject of determination by the Land Registration Court under the Land Titles Act.”***

But for the fact that the Land Tribunal had no jurisdiction to entertain the dispute between the *ex parte* applicant and the third respondent, I would not have interfered with the Tribunal’s decision. This is

because, in my view, although their decision indicated that they were determining ownership of the suit property, they were essentially determining who had a right to occupy the suit property. Such a decision, if it was made with jurisdiction, would have been in terms of section 3(1) of the Land Dispute Tribunal Act. Similarly, the order given by the resident magistrate at Chuka of injunction restraining the *ex parte* applicant would have been within the provisions of the Act and more particularly section 7(2) Land Dispute Tribunal Act. That section provides:-

***“2. The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”***

In granting those orders therefore, the magistrate was correct. However as I stated before, the jurisdiction of a dispute of the suit property solely belonged to the adjudication officer that is provided under section 10(1) of Cap 284. That being the case, the *ex parte* applicant does succeed in his prayer for judicial review. The judgment of this court is as follows:-

- 1. An order is hereby issued in the nature of certiorari to bring before this court the proceedings of Meru South District Land Dispute Case No. IGA7 of 2002 which was adopted in Chuka SRM Court LDT No. 21 of 2003 and the same are hereby quashed to the extent they affect the ex parte applicant and to the extent that they affect land parcel Block 1 No. 36A KAMUTIRIA ADJUDICATION SECTION.***
- 2. Each party shall bear its own costs.***
- 3. The dispute between the ex parte applicant and the 3<sup>rd</sup> respondent shall be decided by the adjudication officer as provided under the Land Adjudication Act 284.***

Dated and delivered at Meru this 8<sup>th</sup> day of October 2009.

**MARY KASANGO**

**JUDGE**