



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC JUDICIAL REVIEW NO. 175 OF 2004

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

AND

IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF MERU CENTRAL DISTRICT DISPUTES TRIBUNAL CASE NO 20/2004

AND IN THE MATTER OF MERU CMCC NO. 37/2004 LTD. 37/04

BETWEEN

REPUBLICAPPLICANT

VERSUS

THE MERU CENTRAL LAND DISPUTES TRIBUNAL1ST RESPONDENT

**(THE DISTRICT COMMISSIONER MERU CENTRAL DISTRICT2ND
RESPONDENT**

JACKSON MBARAKU.....3RD RESPONDENT

YUSUF NKUMANIRA.....4TH RESPONDENT

J U D G M E N T

1. The Ex Parte Applicant herein obtained leave on 07:10:04 to file suit seeking orders of certiorari and Prohibition in respect of the Meru Central District Land Dispute Tribunal Case No 20 of 2004.
2. The substantive Notice of Motion was filed on 25:10:04, where it is averred that the tribunal’s award was read in the Magistrates Court on 29:07:04 in Meru CMCC LDT No. 37 of 2004.
3. Ex Applicant contends that the tribunal had no jurisdiction to deliberate on a claim of land ownership

in respect of Parcel No. L.R. KAIMURI “A” 195 which was and is owned by the Exparte Applicant.

4. The present 2nd, 3rd and 4th Interested Parties were the Plaintiffs or claimants in the tribunal case where as the Exparte Applicant was the Defendant/Respondent.

5. Only Jackson Mbaruka responded to the Notice of Motion vide his Replying Affidavit filed in Court on 10:08:05. He contends that the tribunal acted within its jurisdiction, that the issue before the tribunal was one of occupation and that the applicant ought to have lodged an appeal to the Provincial Land Disputes if he was dissatisfied with the award.

6. For one reason or another, the matter has been in Court for decades.

7. On 26.04.17, the Court gave directions that the suit be heard by way of written Submissions. By this time, the Ex-Applicant was being represented by E. Mwangi, while M .Kariuki was appearing for 3rd and 4th Interested Parties. The 2nd Respondent had been served but failed to turn up in Court and has never made on appearance. The Respondent too was absent despite the fact that Attorney General had been served. On 28:09:17, the Attorney General was given last chance to put in their Submissions. They did not comply.

8. The Exparte Applicant and the 3rd and 4th Interested Parties have however filed their Submission.

Determination:

9. I have considered all the arguments advanced herein. I find that the issues for determination is just one **“Whether the Meru Central District Tribunal had jurisdiction to give the award in case No. 20 of 2004”**.

10. As rightly submitted by both the Ex-parte Applicant and the 3rd and 4th Interested Parties, the applicable law is Section 3 (1) of the now repealed Land Disputes Tribunal Act where it was provided that the tribunal had the mandate to hear cases in respect of ;

(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.”**

11. The 3rd and 4th Interested Parties have submitted that the claim presented before the tribunal was one of occupation and that the findings there of were that; **“The Plaintiffs have dwelt there for a long time and they have no other shamba”**

12. On the other hand, the Ex-Parte has submitted that the land was registered in the name of Ex-parte Applicant and hence the tribunal had no jurisdiction to order for its Subdivision. It has also been submitted for the Ex-Parte Applicant that the tribunal had no jurisdiction to order for subdivision of the land.

13. Further, the Ex-parte Applicant has submitted that the award was not dated and that one of the members Elisha Nkamari did not sign the award.

14. I find that Ex-Parte Applicant has availed a green card for the Suitland Parcel No. KAMURAI “A” 195. It indicates that Ex-parte Applicant became the registered owner of this land on 12:11:92 and a title deed was issued on 02:05:1993.

15. The tribunal case was lodged in 2004. It means that Ex-Applicant was the registered owner of the

land by the time the tribunal case was lodged.

16. The decision thereof reads as follows:-

“The shamba in question No. 195 Kiamuri “A” should be divided into four equal parcels.

Stephen Mukumu, Jadiel M’Itaru and Jackson Mbaraka, Joseph Muriungi are beneficiaries”.

17. It is clear that this Judgment is not in tandem with the mandate of the tribunal as set out in Section 3 of the Act. I am therefore inclined to find that the tribunal had no jurisdiction to determine the dispute.

18. I must add that indeed the said Judgment is not dated, and one member Elisha Nkamani has not signed the same.

19. In the final analysis the motion succeeds.

1. An order of Certiorari is hereby granted to call and quash the proceedings/decision of the Meru Central District Land Disputes Tribunal Case No. 20 of 2004 dated 14/06/2004 (and CMCC LDT 37 OF 2004) to the extent the decision affects the Exparte Applicant’s ownership of L.R KIAMURI ‘A’195.

2. That an order of prohibition be granted prohibiting the implementation and/or confirmation of the award of the Meru Central District Land Disputes Tribunal No. 20 of 2004 read in Court on 29/07/2004 vide Meru C.M.C.C (LDT) No. 37.

3. As to costs, I have taken into account the lengthy period the dispute has been in the litigation arena. All have suffered. In the Circumstances, each party is to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13TH DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-

CA: Janet

E. Mwangi for Exparte Applicant absent

Kiango for Respondent present

M.Kariuki for Interested Party (3rd & 4th) present

HON. L. N. MBUGUA

ELC JUDGE