



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**JUDICIAL REVIEW NO. 3 OF 2016**

IN THE MATTER OF AN APPLICATION FOR PREROGATIVE ORDER OF CERTIORARI

AND

IN THE MATTER OF LAND DISPUTE TRIBUNAL ACT 18 OF 1990

AND

IN THE MATTER OF KIRINYAGA CENTRAL DIVISION LAND DISPUTES TRIBUNAL  
CASE NO. 6 OF 2010

AND

IN THE MATTEER OF KERUGOYA PRINCIPAL MAGISTRATE'S COURT LDT NO. 17 OF  
2010

REPUBLIC.....APPLICANT

VERSUS

KIRINYAGA CENTRAL DIVISION LAND DISPUTES.....1<sup>ST</sup> RESPONDENT

KERUGOYA PRINCIPAL MAGISTRATE'S COURT.....2<sup>ND</sup> RESPONDENT

DANIEL GITHINJI NJOGU.....3<sup>RD</sup> RESPONDENT

FRANCIS ANDREW NJOGU.....4<sup>TH</sup> RESPONDENT

JONAH KAMAMI A. NJOGU.....5<sup>TH</sup> RESPONDENT

JACOB MUNYI ANDREW.....EX-PARTE APPLICANT

**JUDGMENT**

Having been granted leave by **WANJIRU KARANJA J.** (as she then was), the Applicant herein **JACOB MUNYI ANDREW** filed this Notice of Motion on 22<sup>nd</sup> November 2010 seeking the following orders:

- 1. That the Applicant be granted an order of certiorari to remove into the High Court and quash the award of the KIRINYAGA CENTRAL DIVISION LAND DISPUTES TRIBUNAL and subsequently order of KERUGOYA PRINCIPAL MAGISTRATE adopting the award as***

***judgment of the Court on 8<sup>th</sup> June 2010 in the Land Disputes Tribunal Case No. 17 of 2010  
KERUGOYA.***

***2. That costs of this application be provided for.***

From the application and the statutory statement of facts, it is clear that the Notice of Motion is premised on the pleadings that the **KIRINYAGA CENTRAL DIVISION LAND DISPUTES TRIBUNAL** (the Tribunal) acted ultra vires by determining a dispute relating to title to land registered in the Applicant's names.

The record shows that as far back as 28<sup>th</sup> May 2013, the Applicant had filed his submissions and **ONG'UDI J.** directed that the same be served upon the Respondents. On 28<sup>th</sup> October 2015, **BWONWONGA J.** made orders transferring the case to this Court. To-date, there are no submissions filed by the Respondents. That is not surprising however because from a perusal of the file, there is nothing to show that any of the Respondents filed any replying affidavit to this Notice of Motion although the firm of **GITONGA D.N.** Advocates are on record as appearing for the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. The Notice of Motion is therefore not opposed.

From the pleadings herein, the Applicant is the registered proprietor of land parcel No. MUTIRA/KIRIMUNGE/582 (the suit land) and a copy of the title deed issued to him on 11<sup>th</sup> December 2007 is part of the record. The 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents who are his brothers filed a case against him at the Tribunal accusing him of transferring the suit land to himself yet it belonged to their late father and therefore they were entitled to a share. The Tribunal agreed with the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents and made an award sub-dividing and distributing the suit land as follows:

1. JACOB MUNYI ANDREW (Applicant) - 5 acres
2. DANIEL GITHINJI NJOGU (3<sup>rd</sup> Respondent) - 1.5 acres
3. FRANCIS ANDREW NJOGU (4<sup>th</sup> Respondent) - 1.5 acres
4. JONAH KAMAMIA NJOGU (5<sup>th</sup> Respondent) - 1.5 acres

The Tribunal further directed the Executive officer of the subordinate Court at Kerugoya to sign all the necessary documents to facilitate such sub-division and the Land Registrar to act without the old title deed if not presented. That award was adopted and made a judgment of the **PRINCIPAL MAGISTRATE'S COURT KERUGOYA in LDT CASE No. 17 of 2010** on 8<sup>th</sup> June 2010 and a decree followed. That provoked this application.

In granting leave to file this Judicial Review application, **WANJIRU KARANJA J.** (as she then was) made the following pertinent remarks with regard to the conduct of the Tribunal:

***“It appears to have acted in excess of jurisdiction. The Tribunal also has no jurisdiction to cancel or otherwise interfere in title deeds to land. I am satisfied that the Ex-parte Applicant has established a good case for Judicial Review”.***

The above basically sums up the correct position in law with regard to this Notice of Motion. In arriving at the award that it did and which was adopted as an order of the subordinate Court, the Tribunal was exercising its jurisdiction as provided under the **repealed Land Disputes Tribunals Act Chapter 303A Laws of Kenya**. Its jurisdiction was circumscribed **by Section 3 (1)** of the said Act in the following terms:

***“Subject to this Act, all cases of a civil nature involving a dispute as 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; and**
- (c) trespass to land,**

**shall be heard and determined by a Tribunal established under Section 4”.**

It has been held in a long line of cases that such a Tribunal had no jurisdiction to determine a dispute regarding title to land. In the case of **JOTHAM AMUNAVI VS THE CHAIRMAN SABATIA DIVISIONAL LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL No. 256 of 2002**, the Court of Appeal expressed itself as follows:

**“It is clear that the proceedings before the Tribunal related to both title to land and the beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of Section 3 (1) of the Land Disputes Tribunals Act. By Section 159 of the Registered Land Act, such a dispute can be tried by the High Court or by the Resident Magistrate’s Court in cases where the latter has jurisdiction”**

Where the land subject of the dispute is registered as is the case herein, it was beyond the jurisdiction of the Tribunal to purport to sub-divide it and order the Registrar to issue titles to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. It may very well be that the land which originally belonged to the father to the Applicant and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents was family land in which they all had a share. Indeed the claim by the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents was that the land subject of the suit was obtained from the clan. However, as was held in the case of **MUNICIPAL COUNCIL OF MOMBASA & UMOJA CONSULTANTS LTD C.A CIVIL APPEAL No. 185 of 2001**, Judicial Review is concerned not with the merits of the decision itself but rather, with the decision making process. And in an application for Judicial Review, the Applicant must show, for example, that the decision making body proceeded without jurisdiction and therefore, the decision arrived at is tainted with illegality – see **PASTOLI VS KABALE DISTRICT LOCAL GOVERNMENT COUNCIL & OTHERS 2008 2 E.A 300**. That is precisely the Applicant’s case in this application in which he alleges that the Tribunal acted ultra-vires by cancelling the title to his land and sharing it to the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents. From what I have already stated above, that complaint is justified since the Tribunal could not cancel title to registered land as it purported to do. Its award and the orders of the subordinate Court adopting the same must therefore be quashed by an order of certiorari.

Ultimately therefore, I allow the Applicant’s Notice of Motion dated 22<sup>nd</sup> November 2010 in the following terms:

- 1. The award of the Kirinyaga Central Division Land Disputes Tribunal and the subsequent order of the Kerugoya Principal Magistrate adopting the award as judgment of the Court on 8<sup>th</sup> June 2010 in Land Disputes Tribunal Case No. 17 of 2010 are hereby quashed.**
- 2. There shall be no order as to costs.**

**B.N. OLAO**

**JUDGE**

**8<sup>TH</sup> DECEMBER, 2017**

Judgment delivered, dated and signed in open Court this 8<sup>th</sup> day of December 2017 at Kerugoya

Mr. Munene for Ms Ngangah for Applicant present

Mr. Gitonga for Respondents absent

Gichia Court clerk present

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**8<sup>TH</sup> DECEMBER, 2017**