



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU**

**JUDICIAL REVIEW NO. 100 OF 2008**

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF  
CERTIORARI/PROHIBITION AGAINST THE MERU CENTRAL LAND DISPUTE  
TRIBUNAL NKUENE DIVISION**

**AND**

**IN THE MATTER OF SECTIONS 8 AND 9 OF THE LAW REFORM ACT CAP. 21 LAWS OF  
KENYA**

**AND**

**AND IN THE MATTER OF MERU CENTRAL LAND DISPUTE TRIBUNAL CASE NO. 70 OF  
2008**

**AND**

**IN THE MATTER OF THE MERU PRINCIPAL MAGISTRATE'S LD T NO. 72 OF 2008**

**AND**

**AND IN THE MATTER OF LAND PARCEL LR NO. NKUENE/MITUNGUUU/463**

**CHARLES MUTHURI RUGIRI.....EX PARTE APPLICANT**

**-VERSUS-**

**CHAIRMAN MERU CENTRAL**

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

**LAND DISPUTE TRIBUNAL**

**NKUENE DIVISION.....2<sup>ND</sup> RESPONDENT**

**JOSEPH MAGIRI PAUL.....INTERESTED PARTY**

**JUDGMENT**

**BACKGROUND**

The ex parte applicant commenced the Judicial Review by an ex parte Chamber Summons brought under Order LIII Rule (1) (1) and 2 CPR and section 8 & 9 of the Law Reform Act chapter 26 Laws of Kenya. The application is supported by a verifying affidavit sworn on 22/12/2008 and a statement of facts dated the same date. When the application was placed before the duty Judge Hon. Justice M.A. EMUKULE on 21<sup>ST</sup> January 2008 and after perusing the application and hearing counsel for the applicant Mr. Gichunge, leave was granted to the applicant to apply for Judicial review order of certiorari to bring before this Honourable Court the proceedings and decision of the Meru Central Land Disputes Tribunal case no. 70 of 2008 for purposes of quashing to the extent that it affected the applicant's title registration and ownerships of Land Parcel No. NKUENE/MITUNGUU/463. The Hon. Judge also directed that the leave so granted do operate as stay of proceedings in Meru Central Land Disputes Tribunal case no. 70 of 2008 and Meru Principal Magistrate LDT NO. 72 of 2008. The Hon. Judge also directed the Applicant to file their substantive Notice of Motion within 21 days of that order and cause it to be served upon the Respondents and the Hon. Attorney General. On 29/1/2009. The Applicant filed the Notice of Motion under Order L 111 Rule 3 (1) CPR and Section 8 & 9 of the Law Reform Act. The interested party appointed the firm of J.O. Ondieki & Co. Advocates to act for him who then filed a replying affidavit. Non of the respondents filed any response.

### **EX- PARTE APPLICANT'S CASE**

The complaint by the ex parte applicant is that in a decision rendered on 19/11/2008, read to the parties vide PMCC Court LDT NO. 72 of 2008 the Respondents herein held that there was no right to have the applicant's name registered in Land Parcel No. 463 NKUENE/MITUNGUU. The Respondents also noted that there was no agreement and authority by Joseph Magiri who was the registered owner. They also found that there was no consent from the Land Control Board. They directed the court to order the Lands Registrar of Meru Central to write off the name of the ex parte Applicant from Parcel No. NKUENE/MITUNGUU/463 and have the same registered in the name of Joseph Magiri. The Respondent also requested the honourable court to order the Executive Officer to sign the documents on behalf of the objector. When the matter came up for directions the parties through their legal representative agreed to dispose of this case by way of written submissions.

### **EX- PARTE APPLICANTS SUBMISSIONS**

The ex-parte Applicant argued that the interested party lodged a claim vide LDT NO. 70 of 2008 before the Nkuene Division Land Disputes Tribunal to have the ex-parte applicant removed as a co-proprietor in Land Parcel No. NKUENE/MITUNGUU/463. He submitted that the defunct Land Disputes Tribunal mandate was limited and specific and that issues of registration and ownership of land were beyond their scope of jurisdiction. He cited Section 3 (1) of the now repealed Land Disputes Tribunal Act 1990 which clothed the Tribunal with jurisdiction on the following disputes.

- (a) The division of or determination of boundaries in land, including land held in common.
- (b) A claim to occupy or work land or;
- (c) Trespass to land.

The Ex parte Applicant contends that when the Land Disputes Tribunal (Nkuene) entertained and proceeded to hear a claim over ownership and registration of Land under the now repealed Land Registration Act Cap 300 Laws of Kenya the Tribunal acted ultra vires to its powers and exceeded the jurisdiction it was clothed with by law. The Ex parte applicant contends that the proceedings and the decision of the tribunal dated 19/11/2008 was arrived at without jurisdiction. He then urged this honourable court to declare the proceedings nullity, illegal and proceed and quash the same. He relied on the following decision;

**JR. NO. 91 OF 2009 (MERU) (UNREPORTED)**

**LYDIA MWITIAMBI M'MUNYUA –VS-**

## MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL & ANOTHER

In the case the learned judge Hon. Justice J.A. Makau (as he then was) held thus:-

*“The Land Disputes Tribunal Act (Chapter 303A) repealed under which the Dispute was referred to the Tribunal provided under Section 3 (1) (b), (c), (d) as follows;*

*“3 (1) 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; or*

*(c) trespass to land, shall be heard and determined by a tribunal established under S.4.*

*The Section above is clear that the tribunal could only deal with cases of civil nature involving disputes stated herein above but not claim over a registered land over issue of jointly registered land. The Land Disputes Tribunal purported to have power to order cancellation of joint title and sharing the land between exparte applicant and interested party was beyond its jurisdiction . . . .”*

### INTERESTED PARTY’S SUBMISSION

The Interested Party submitted that the Ex-parte applicant has not demonstrated how he came to be registered as a co-owner of Parcel No. NKUENE/MITUNGUU/463. He has not annexed any document to demonstrate how he came to be the co-owner of the parcel of land with the interested party herein. He argued that he has not annexed sale agreement to show that he bought the land from him. He therefore sought to have the application dismissed with costs.

I have looked at the pleadings and the submissions by both the Ex-parte Applicant and the Interested party. The issues in this Judicial Review application are straight forwarded. The Land Disputes Tribunal Act which was repealed had set out clearly defined functions under Section 3 (1) thereof which are as follows:-

(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

The proceedings of the tribunal and the award were beyond the jurisdiction donated by statute. When they purported to declare that the Applicant had no right to have his name in parcel no. NKUENE/MITUNGUU/463, the Respondents were acting ultra vires their powers and therefore acted illegally and their actions are null an void. In the upshot, I make the following orders:-

**1. That an order of CERTIORARI be and is hereby issued quashing the proceedings and the award issued by the Respondents in LDT No. 70 of 2008 dated 19/11/2008.**

**2. An order of Prohibition be and is hereby issued against the Respondents and the Interested Party prohibiting them from any dealing with LR. NO. NKUENE/MITUNGUU/463 so as to affect the Ex-parte Applicants’ right and interest in the said parcel of land.**

**3. Since the Land Disputes Tribunal has been repealed and the office of the Hon. Attorney General was not enjoined as party to this suit, I direct each party to bear their own costs.**

**SIGNED AT GARISSA ELC COURT BY JUDGE E. C. CHERONO (MR)**

**DATED AND DELIVERED AT MERU ELC COURT THIS 7<sup>TH</sup> DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-**

Muriuki Ken for A.G

Kithinji for Ex-Parte Applicant

Miss Wanjohi H/B for Ondieki for Interested parties

**HON. L. N. MBUGUA**

**ELC JUDGE**