



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**MISC APPLICATION NO 70 OF 2009**

**REPUBLIC .....APPLICANT**

**VERSUS**

**MOLO DISTRICT LAND DISPUTES TRIBUNAL**

**THE PM'S COURT MOLO .....RESPONDENTS**

**EX-PARTE**

**OLIVER NJIHIA THANDE**

**RULING**

***(Application for certiorari to quash decision of the Land Disputes Tribunal; dispute over sale of land; matter outside jurisdiction of Tribunal; order of certiorari issued and prohibition to stop adoption of the said decision as a decree of the court)***

1. The motion before me is a judicial review application seeking orders to quash the decision of the Molo Land Disputes Tribunal (the Tribunal) case numbers 1, 2, and 3 of 2009 and any consequential decrees or judgments which may have been issued by the Tribunal. The core complaint is that the Tribunal did not have jurisdiction to adjudicate over the matter.

2. The facts of the case are that the ex-parte applicant owns half share in the land parcel L.R No. 9265/2. The whole land is 280 acres and the ex-parte applicant owns 140 acres. On 19 October 2007, he sold one acre to the 1st interested party at Kshs. 150,000/=; on the same date, another one acre to the 2nd interested party; and the third interested party also paid Kshs. 110,000/= towards purchase of one acre. The sub-division of the land took longer than expected and a dispute arose between the ex-parte applicant and the three purchasers. The three purchasers then instituted proceedings before the Tribunal and the Tribunal found that the land had been duly sold and inter alia, that the ex-parte applicant should not rent or cultivate the disputed land. The award was then filed at the Principal Magistrate's Court at Molo in Molo LDT Case No. 6 of 2009. At the time this suit was filed, the award had not yet been adopted as a judgment of the court. In this motion, the ex-parte applicant has inter alia complained that the Tribunal could not have jurisdiction to determine matters relating to specific performance and contracts relating to land transactions. He has also argued that the agreements became void after six months for want of Land Control Board consent.

3. The interested parties filed affidavits to oppose this motion but the respondent did not. However, in the course of the proceedings, the interested parties seem to have thrown in the towel and Ms. Nancy

Njoroge, counsel for the interested party, informed the court that the interested parties have accepted a refund from the ex-parte applicant and no longer wish to oppose the main motion. Mr. Kirui for the respondent conceded that the Tribunal could not have had jurisdiction in the matter.

4. I have considered the case. The jurisdiction of the Land Disputes Tribunal (now defunct) was spelt out in the Land Disputes Tribunal Act, Act No. 18 of 1990 (repealed by the Environment and Land Court Act in 2011). Section 3 of the repealed statute provided 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 section 4.*

5. It will be seen from the above, that the jurisdiction of the Tribunal, was only on matters related to the division or determination of boundaries; claims to occupy or work land; and trespass to land. The Land Disputes Tribunal did not have jurisdiction to issue judgment on disputed ownership of land or approve sale agreements and transactions over dispositions of land. Clearly in this instance, the Tribunal was out of jurisdiction.

6. The respondent and interested parties have already conceded to this motion. I see no reason why it should not succeed and I allow it.

7. I issue an order of certiorari quashing the decision of the Molo Land Disputes Tribunal in cases No. 1, 2 and 3 of 2009. I further issue an order of prohibition, prohibiting the Molo Principal Magistrates' Court from adopting the said award.

8. As to costs, it is the Tribunal which was at fault. However, the said Tribunals are now defunct. I therefore make no orders as to costs.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 23rd day of April 2015**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of: -**

Ms Nancy Njoroge for interested parties.

N/A for M/s Onesmus Githinji for ex-parte applicants.

N/A for state Law office for respondent

Emmanuel Juma : Court Assistant

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**