



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT MACHAKOS

ELC CASE NO.140 OF 2009

SIMON MUSYOKA MAVUA..... PLAINTIFF

VERSUS

MAKUENI DISTRICT LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT

THE CHIEF MAGISTRATE'S COURT..... 2<sup>ND</sup> RESPONDENT

MACHAKOS DISTRICT LAND REGISTRAR MAKUENI... 3<sup>RD</sup> RESPONDENT

NGULA MAVUA ..... 4<sup>TH</sup> RESPONDENT

R U L I N G

1. In the **TREATISE LAW HAND BOOK** (Your Practical guide to the Law in Victoria) opines that:

*“Prohibition is an order to a tribunal public body or official requiring it to cease proceedings. An order of prohibition should be sought where a body has failed to exercise its jurisdiction properly or failed to provide natural justice and its proceedings are continuing.”*

This same view was held by *Meru High Court Misc.111/97 SAMSON KIBERA –VS- FRANCIS MUKUNGI & OTHERS* in the judgement of *Ouko J.* as he then was.

2. The instant **Motion** filed on **19.5.09** seeks to prohibit the enforcement of the award adopted as judgment of the court. The ground for impugning it is that the tribunal acted *ultra vires* as it lacked jurisdiction to entertain the dispute. It is also accused of breaching the rules of natural justice as it condemned Applicant unheard and thus the award and judgment therefore a nullity.
3. In the cited authority above it is the order of certiorari which is applicable in a situation where the decision has been issued/or made and is being impugned on the ground of want of jurisdiction or breach of rules of natural justice.

In **LAW HAND BOOK** *supra*, it is opined that:

*“certiorari is an order setting aside a decision (technically, the record of decision maker – is removed to the court and the court then quashes the decision and expunges it from the record). An order of certiorari would be sought where a decision has been*

*made unlawfully and the decision should be set aside. Generally an order of certiorari is sought in combination with an order of mandamus i.e. a certiorari setting aside the decision and an order for mandamus requiring the decision maker to make the decision again.”*

4. The Applicant has not explained or even shown why he never applied for the order of certiorari as the decision complained of had already been made at the point of filing of the instant motion. The order of prohibition would have been available at the time the proceedings were on-going before the tribunal.
5. The court thus finds the motion defective and incompetent and makes the following orders:
  1. The Notice of Motion dated 9.5.2009 is struck out.
  2. No orders as to costs.

**Dated and Delivered at Machakos this 13<sup>th</sup> day of March, 2015.**

**CHARLES KARIUKI**

**JUDGE**