



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO. 24 OF 2010**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR AN ORDER OF  
CERTIORARI**

**AND**

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

**AND**

**IN THE MATTER OF:**

MMN (suing as next of kin to

**HKM(EX-PARTE).....APPLICANT**

**VERSUS**

**BAHATI DISTRICT LAND DISPUTES TRIBUNAL.....1ST  
RESPONDENT**

**CHIEF MAGISTRATES COURT-NAKURU..... 2ND RESPONDENT**

**ATTORNEY GENERAL ..... 3RD RESPONDENT**

**AND**

**DAVID KIHUYU MUNGAI ..... 1ST INTERESTED PARTY**

**PAUL MURIITHI NJUGUNA ..... 2ND INTERESTED PARTY**

**RULING**

1. The Applicant, **MMN** suing as a next of kin to **HKM** filed a Notice of Motion dated 25th February, 2010 under Order LIII Rules 3(1) & (2) and 4 of the **Civil Procedure Rules** seeking the following orders:
  - (a) That an Order of Certiorari do issue to bring before this court for the reason of being quashed the decision of Bahati District Lands Disputes Tribunal in case No. 157 of 2009.

(b) That an Order of Prohibition do issue, to prohibit the implementation and or execution of the Decree issued on 30th October, 2009 in Nakuru Chief Magistrate's Court in Land Dispute No. 45 of 2009.

(c) Costs of this application

2. The application was filed pursuant to leave granted on 10th February, 2012. It is supported by the Statutory Statement dated 8th February, 2010 and a Verifying Affidavit sworn by the Applicant on even date.
3. The application was opposed by **David Kihuyu Mungai**, the 1st interested party. He filed his Grounds of Opposition on 22nd July 2010 and Written Submissions on 12th June 2012.
4. The state counsel representing 1st -3rd Respondents did not, despite opportunity to do so, file any affidavits or submissions in response to the application.
5. From the material before me, the applicant aver that her son, HKM (a minor) is the allottee of plot number 143 Akusi Farm; That the 1st Interested Party referred a dispute to the land dispute tribunal against the 2nd Interested party over ownership of the said plot; That the tribunal held in favour of the 1st interested party and its decision was adopted as judgment of the court where upon a decree was issued.
6. The 1st Interested party's position was that the tribunal acted within its jurisdiction as conferred by law. He further faulted the application as bad in law and that the facts and evidence presented did not meet the threshold required to grant the orders sought.
7. Before dealing with the merits of the application, I wish to note the heading of the application was improper. In judicial review the applicant is always the 'Republic' rather than the person or persons aggrieved by the decision sought to be impugned. See **Farmers Bus Service & Others vs. Transport Licensing Appeal Tribunal [1959] EA 779**. Though the application is incompetent on this score, it is not fatally defective. Moreover, the **Constitution of Kenya, 2010** requires the Court to render justice without undue regard to technicalities of procedure.
8. From the pleadings, the sole issue for determination is whether the decision of Bahati District Land Tribunal was unlawful, and if so, whether the applicant is entitled to orders of judicial review as prayed.
9. In determining this issue, it is important to consider the circumstances of the applicant in relation to the subject property. From the documents attached to the applicants affidavit, the court notes that the certificate attached acknowledges that the applicant purchased shares in Akusi Farmers limited but cannot be evidence of ownership of the subject property. There is no evidence to support the fact averred in the statement of facts that the applicant is the registered owner of the subject plot or the plot was allotted to him.
10. The decision reached by the land tribunal did not concern ownership but trespass of land. It was the claimant case before the tribunal that he was the owner of the suit land which the 2nd Interested party herein had trespassed onto. From the record, there is no evidence that the objector in those proceedings ever claimed ownership of the subject property. The objector did not participate in the proceedings despite been summoned. From my perusal of the proceedings, the tribunal attempted to ascertain whether the applicant was owner of the subject property so as to correctly deliberate on the question before it.
11. Accordingly, I do find that the tribunal acted within its jurisdiction as conferred by law and the Notice of Motion dated 21st February, 2010 is incompetent for lack of evidence to support the factual averments in the verifying affidavit. The same is struck out with costs to the interested party.

**Dated, Signed and Delivered at Nakuru on this 17<sup>th</sup> day of January, 2014.**

**L N WAITHAKA**

**JUDGE**

**PRESENT**

Mr Odhiambo holding brief for Mr Ngure for Interested Party.

Mr Said holding brief for Mrs Ndeda for the Applicant

Mr Njuguna for Respondent

Emmanuel Maelo: Court Assistant

**L N WAITHAKA**

**JUDGE**