



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC. CIVIL APPLICATION NO. 112 OF 2009

IN THE MATTER OF AN APPLICATION BY RICHARD MUTINDA MUINDI FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL

RICHARD MUTINDA MUINDIAPPLICANT

VERSUS

1. CENTRAL DIVISION LAND DISPUTES TRIBUNAL MACHAKOS

2. CHIEF MAGISTRATE'S COURT MACHAKOS

3. DISTRICT LAND SURVEYOR

4. HONOURABLE ATTORNEY GENERAL RESPONDENTS

AND

JACKSON MUTUKU KATUKUINTERESTED PARTY

RULING

1. The **Notice of Motion** dated 9/6/2009 seeks the following orders:-

1. **“THAT, the award given on the 27/10/2008 by the Central Division Land Disputes Tribunal Machakos and the entire proceedings thereof respecting Tribunal Case No. 94 of 2007 (Jackson Mutuku Katuku –vs- Richard Mutinda Muindi) be brought before this court for the purposes of being quashed.**
2. **THAT, prohibition orders do issue prohibiting the Chief magistrate's Court Machakos from issuing a decree and or any execution orders respecting the said Central Division Land Disputes Tribunal award given on 27/10/2008 in Case No. 94 of 2007 (Jackson Mutuku Katuku –vs- Richard Mutinda Muindi & Another and adopted by the Chief Magistrate Court on 19/2/2009 in Miscellaneous No. 157 of 2008.**
3. **THAT, prohibition orders do issue prohibiting the District Land Surveyor from executing and or in any way implementing the said Central Division Land Disputes Tribunal Award given on**

27/20/2009 in Case No. 94 of 2007 and adopted by the Chief Magistrates Court Machakos on 19/2/2009, in the Misc. No. 157 of 2008.

4. **THAT, costs be in the cause.”**

2. According to the Statutory Statement, the verifying and supporting affidavit, land parcel No. **Muputi/Kiima Kimwe/22** is registered in the name of the *ex parte* Applicant, **Richard Mutinda Muindi** (hereinafter Applicant) and the late **Paul N. Nzau**. The Applicant’s complaint is that the **Central Division Land Disputes Tribunal Machakos** adjudicated in **Tribunal Case No. 94 of 2007** without the requisite jurisdiction and without following the rules of natural justice and gave an award that was void *ab initio*. The Applicant further accuses the Tribunal of hearing the case which involved a deceased person without any grant of Letters of Administration having been obtained.

3. The application is opposed. The Interested Party, **Jackson Mutuku Katuku** swore a replying affidavit on 23/11/2009. According to the Interested Party, he purchased the land in question.

4. The application was canvassed by way of written submissions which I have duly considered.

5. The award by the Land Disputes Tribunal gave the Claimant therein (Interested Party) 150 ft x 100 ft portion of land to be excised from the suit land. This was clearly a decision made without jurisdiction contrary to **section 3 (1)** of the **Land Disputes Tribunal Act** which provides as follows:-

““Subject to this Act, all cases of 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.”

6. This renders the Tribunal’s decision null and void *ab initio*. The same applies to the consequential orders. Consequently, I allow the application. Taking into account the circumstances of this case, each party to bear own costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 31st day of July 2014.

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B. THURANIRA JADEN

JUDGE