



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Judicial Review 20 of 2010**

**IN THE MATTER OF AN APPLICATION BY HOWARD LILAKO OMURWA FOR LEAVE TO  
APPLY FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990 IN THE  
EMUHAYA DIVISIONAL LAND DISPUTES TRIBUNAL AWARD NO. 8 OF 2009 AND  
VIHIGA C.M. MISC. APPLICATION NO. 64 OF 2009**

**BEWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**THE CHAIRMAN, EMUHAYA DIVISIONAL LAND DISPUTES TRIBUNAL .....  
RESPONDENT**

**EXPARTE**

**HOWARD LILAKO OMURWA ..... APPLICANT**

**V E R S U S**

**EVANS MATIMU JOASH ..... 1<sup>ST</sup> INTERESTED PARTY**

**JOSHUA ENANE AMWAYI ..... 2<sup>ND</sup> INTERESTED PARTY**

**JOASH MARTIM AMWAYI ..... 3<sup>RD</sup> INTERESTED PARTY**

**R U L I N G**

The application dated 14.6.2010 is seeking orders of certiorari so that the proceedings of the Emuhaya Division Land Disputes Tribunal in claim number 8 of 2009 and filed in Vihiga CMCC Misc. Application No. 9 of 2009 be quashed. The interested party was served but did not respond. Mr. Onyiso for the respondent and Ms. Rauto for the applicant agreed to have the application be determined by the court on the basis of the documents on record.

The background of this application is that the ex-parte applicant bought part of plot number **E/BUNYORE/EBUSAMIA/1676** from **JOASH ONG'ANYA MATIMO** – the 3<sup>rd</sup> Interested party. He

fully paid the purchase price and started utilizing the plot. The 1<sup>st</sup> and 2<sup>nd</sup> interested parties who are the sons of the 3<sup>rd</sup> interested party sued their father before the land disputes tribunal claiming that their father had not given them their respective portions of land. They did contend that their father inherited the land from their grandfather and it was his duty to pass over the land to them. They do not live at their rural home and when they went back they found that their father had sold part of the land. Their father testified before the tribunal that he educated the claimants and they were not taking care of him. Most of the time they have been assaulting him. He showed them some places to build but they had not. He was not aware where they were working and where they were living. The tribunal held in favour of the claimants and proceeded to declare as null and void the agreement between the applicant and the 3<sup>rd</sup> interested party.

Since the land was registered in the name of the 3<sup>rd</sup> interested party who was at liberty to sell it to anybody, I do find that the land disputes tribunal exceeded its jurisdiction by nullifying the sale agreement between the owner and the buyer. The rights of a registered proprietor cannot be defeated by the claim of the sons that the land was ancestral land. The tribunal did not have jurisdiction to award the land to the claimants. The effect of that decision is to deny the owner of the land his proprietary rights.

I do find that the application is merited and the same is allowed as prayed. The 1<sup>st</sup> and 2<sup>nd</sup> interested parties shall bear the costs of the application.

Delivered, dated and signed at Kakamega this 7<sup>th</sup> day of February, 2013

**SAID J. CHITEMBWE**  
**J U D G E**