



**REPUBLIC OF KENYA**

**High Court at Kakamega**

**Judicial Review 6 of 2009**

*Judicial Review arising from the decision of the Vihiga Land Disputes Tribunal Case No. 2 of 2009 dated 28<sup>th</sup> January 2009*

**IN THE MATTER OF APPLICATION FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF LAND DISPUTE TRIBUNAL ACT [NO.18 OF 1990]**

**IN THE MATTER OF THE DECISION OF THE VIHIGA LAND DISPUTES TRIBUNAL IN TRIBUNAL CASE NO. 2 OF 2009**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**V E R S U S**

**THE CHAIRMAN VIHIGA LAND DISPUTES TRIBUNAL..... 1<sup>ST</sup> RESPONDENT**

**THE PRINCIPAL MAGISTRATE, VIHIGA ..... 2<sup>ND</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**VIOLET KAVULANI AYUMBA ..... 4<sup>TH</sup> RESPONDENT**

**EX-PARTE: LAWRENCE LING'ONDO VUGUNDU ..... 4<sup>TH</sup> RESPONDENT**

## **R U L I N G**

The Vihiga Land Disputes Tribunal heard and determined case No. 2 of 2009 involving plot number KAKAMEGA/BUGINA/165. The Interested Party was the claimant before the Tribunal while the Ex-parte applicant was the objector. On the 28<sup>th</sup> of January 2009 the Tribunal made the following verdict:-

*“The land L.R. NO. KAKAMEGA/BUGINA/165 be sub-divided into two equal portions so that one portion i.e. 0.4 ha. goes to VIOLET KAVULANI AYUMBA while the other portion remains to LAWRENCE LING’ONDO BUGUNDU as per the attached sketch.”*

Being dissatisfied with that decision, the ex-parte applicant filed the current application seeking Judicial Review orders and have the decision quashed by this court. Parties agreed to file written submissions. The applicant maintains that the Tribunal exceeded its jurisdiction by ordering the sub-division of his title deed. On her part, the interested party contends that the Tribunal reached the correct verdict as her claim was to occupy land held in common. Her late husband and mother in-law were all buried on the suit land.

The Interested Party’s claim before the Tribunal was that her late father in-law had sub-divided his land between his sons. Her deceased husband was a step brother to the applicant herein. Her later husband was occupying one portion of the land while the applicant was occupying the other portion. Upon the demise of her husband and mother in-law, the applicant removed the boundary that had been placed by her father in-law and claimed the entire plot.

On his part, the applicant’s position is that his late father had two plots. One was at Mululu and the other one at Budaywa - the suit land. His father had two wives. The applicant’s mother was given the Budaywa plot while the interested party’s mother in-law and her three sons were given the Mululu plot. The applicant is claiming the land to be his.

I have read the proceedings before the Vihiga District Land Disputes Tribunal. The Tribunal’s mandate as provided for under the then Act No. 18 of 1990, Section 3 thereof did not include cancellation of registered titles. The Interested Party could have a claim to occupy the land but the Tribunal exceeded its jurisdiction and went ahead to split the title deed. From the proceedings before the Tribunal, I am satisfied that the Interested Party has a claim to occupy the land in dispute. The best forum to determine that claim is the court and not the Tribunal. The end result would be to know whether the land would be declared to belong to the applicant entirely or that the applicant was holding the other portion in trust for his step brother.

Having reached the above conclusion, I do find that the application is merited and the same is granted. However, the Interested Party shall continue occupying her portion of the land and she should not be evicted from the land until the dispute is determined by the court. Each party is at liberty to approach the court to resolve the dispute. There shall be no orders as to costs.

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

**SAID J. CHITEMBWE**

**J U D G E**