



**REPUBLIC OF KENYA**

**High Court at Machakos**

**Civil Miscellaneous Application 96 of 2008**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**1. THE CHAIRMAN-MACHAKOS DISTRICT LAND  
DISPUTES TRIBUNAL  
2. THE SENIOR RESIDENT MAGISTRATE**

**MACHAKOS LAW COURTS ..... RESPONDENTS**

**AND**

**1. MICHAEL MWAU MAKOVE  
2. JEREMIAH NGUNGA NZIOKA ..... INTERESTED PARTIES  
*EX PARTE* ..... MAKOVE MAATINE**

**R U L I N G**

The **Notice of Motion** dated 16/5/2008 is brought under **Order 53 Rules 3** of the **Civil Procedure Rules** and **Section 8 & 9 of the Law Reform Act Cap 26** and all other enabling provisions of the law.

The motion seeks the following orders:-

**1. THAT an order of Certiorari do issue to remove into this Honourable court for purposes of being quashed the proceedings and decisions of Machakos District Land Disputes Tribunal in tribunal cases numbers 125 of 2007, 126 of 2007 and 127 of 2007 dated 9<sup>th</sup> January 2008, 4<sup>th</sup> January 2008 and 21<sup>st</sup> December 2007 respectively all read on 17<sup>th</sup> March, 2008 at the Senior Resident Magistrate's Court at Machakos in the Misc. 20 of 2008, 18 of 2008 and 17 of 2008 respectively.**

**2. THAT an order or prohibition do issue prohibiting the Senior Resident Magistrate Machakos from issuing a Decree or otherwise enforcing the decision of the Machakos District Land Dispute Tribunal in Tribunal Cases numbers 125 of 2007, 126 of 2007 dated 9<sup>th</sup> January 2008, 4<sup>th</sup> January 2008 and 21<sup>st</sup> December 2007 respectively and all read on 17<sup>th</sup> March 2008 at the Senior**

Resident Magistrate's Court at Machakos in Misc. 20 of 2008, 18 of 2008 and 17 of 2008 respectively.

According to the statutory statement and the verifying affidavit, the Applicant's claim is that he is the registered owner of Land Titles No:-

Ø Muthetheni/Kalyambeu/481

Ø Muthetheni/Kalyambeu/482

Ø Muthetheni/Kyethivo/192

The Applicant's complaint is that the Interested Parties filed cases **No. 125 of 2007, 126 of 2007 and 127 of 2007** at the **Machakos Land Disputes Tribunal** and the Tribunal proceeded to hear the cases without the Applicant being served and thereby condemned the Applicant unheard. That the tribunal which had jurisdiction made orders for the Applicant's parcels of land to be subdivided between his two wives who were also not parties in the proceedings in the dispute. It is further averred that the Awards of the Tribunal in the three cases were filed in the **SRM's Court at Machakos** for the execution of the tribunal's Award.

In the opposition to the application, the Interested Party, **Michael Mwau Makove** swore the affidavit in reply dated 26/5/2008. According to the said affidavit, the Land Disputes Tribunal acted within their jurisdiction as the same was a claim for division, occupancy or work in the land. That the Applicant deliberately refused to participate in the proceedings before the Tribunal hence the case proceeded in his absence.

The Applicant filed their list of authorities. The Interested Parties also filed their list of authorities.

The application was to be canvassed by way of written submissions. The Interested Parties filed their written submissions. The Applicants did not file any written submissions. I have considered the application, the reply to the same, the written submissions and the authorities filed.

It was submitted by the counsel for the Interested Parties that the Notice of Motion was not supported by any evidence as no supporting affidavit was filed. However, **Order 53 rule 4 (1)** provides as follows:-

**“Copies of statement accompanying the application for leave shall be served with the notice of motion, and copies of any affidavits accompanying the application for leave shall be supplied on demand and no grounds shall, subject as hereafter in this rule provided, be relied upon or any relief sought at the hearing of the motion except the grounds and relief set out in the said statement.”**

The submission that the statutory statement was spent is not supported by the law. The filing of the substantive motion under the same file through which the leave was sought is only a matter of technicality.

**Article 159 (d)** of the **Constitution** provides as follows:-

**“justice shall be administered without undue regard to procedural technicalities.”**

The tribunal in all the three cases before it made the orders that the disputed plots **“should be subdivided between Makove's two wives according to Akamba Customary Law, so that Michael Mwau Makove inherits his mothers share.”** The Tribunal's decision touched on ownership, subdivision, inheritance of land as well as matrimonial property dispute. The said awards were made without jurisdiction. **Section 3 (1)** of the **Land Disputes Tribunal Act 1990** 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.”**

The application has merits and is allowed. Each party to meet own costs.

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**B. THURANIRA JADEN**  
**JUDGE**

Dated and delivered at Machakos this **30<sup>th</sup>** day of **May** 2013.

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**B. THURANIRA JADEN**  
**JUDGE**