



REPUBLIC OF KENYA

IN THE HIGH COURT

AT MALINDI

MISCELLANEOUS CIVIL APPLICATION NO. 10 OF 2011 (JR)

SARAH DAMA.....APPLICANT

VERSUS

LAND TRIBUNAL DISPUTE MALINDI.....1ST RESPONDENT

PRINCIPAL MAGISTRATE'S COURT, MALINDI.....2ND RESPONDENT

A N D

LILIAN SIDI.....1ST INTERESTED PARTY

JOHN CHARO TOSFWA.....2ND INTERESTED PARTY

RULING

The exparte applicant through her Notice of Motions dated 25th march 2011 and brought under Order 53 rule 3(1) of the Civil Procedure Rules seeks an order of certiorari to remove to this court for purposes of quashing, the proceeds and award of the Land Dispute Tribunal (Malindi) case No. 20 of 2010 and the decision of the Principal Magistrate in civil case 19 of 2011 adopting the same.

The subject matter is an unregistered piece of land situated at KWACHOCHA. The gist of the applicant's affidavit supporting the application sit that the tribunal acted without jurisdiction by purporting to determine a claim of ownership of the suit land and directing certain payments to be made by the exparte applicant.

The interested parties have filed a replying affidavit in opposition to the application, supporting the decision of the tribunal as lawful, and further stating that the exparte applicant field the application outside of six months.

Having considered the rival affidavits, the submissions as well as the orders which are the subject of this matter, it is quite clear the decision of the Tribunal exceeded its mandate under Section 3(1) of the Land Disputes Tribunal Act.

The dispute before the tribunal related to the issue of ownership to a parcel of land which the tribunal purported to order surrendered to the 1ST Interested Party, as well as requiring certain payments of the parties.

The applicant came to court within six (6) months of the decision of the tribunal albeit very close to the deadline. That objection does not hold.

The award of the Tribunal was a nullity for want of jurisdiction. The nullity could not be cured by way of appeal, as suggested by the Interested Parties.

An order of certiorari shall therefore issue to quash the proceedings and award of the Malindi Land Disputes Tribunal dated 30th August 2010, as well as the subsequent judgment of the Lower Court adopting the award.

Each party will bear its own costs.

Delivered and signed on this **21st** day of **February, 2012** at Malindi in the presence of:

C. W. Meoli

JUDGE