



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**MISCELLANEOUS APPLICATION 32 OF 2010**

**KERESI INGAHINZU MISIGO ..... APPLICANT**

**VERSUS**

**HEZEKIAH JASEYA SAISI ..... RESPONDENT**

**RULING**

The application dated 2nd June, 2010 is made under Order 50 rule 1. The application seeks orders that the Senior Resident Magistrate's Court, Vihiga, be directed to sign the decree in respect of Vihiga SRMCC No. 149/05.

The applicant, **KERESI INGAHIZU MISIGO** in his affidavit in support deponed that the Vihiga Land Disputes Tribunal Award No. 8 of 2006 was made in her favour. That the same was not challenged by way of appeal. That the award was filed at the SRM's Court, Vihiga vide SRMCC No. 149/05 and the same was adopted as a judgment of the court but the magistrate thereafter refused to sign the extracted decree. The Applicant's prayer is that the SRMS's court, Vihiga be compelled to sign the decree.

The annexed draft decree reads as follows:-

**CLAIM FOR:**

1. Disputed portion of land forming part of L.R. No. **KAKAMEGA/MBALE/987**;

This matter coming up for Ruling upon the Applicant's application dated the 8<sup>th</sup> day of November, 2006:

**IT IS HEREBY ORDERED:**

1. That the disputed portion of land forming part of L.R. No. **Kakamega/Mbale/987** be and is hereby awarded to the Applicant herein.
2. That each party to bear its own costs."

The respondent, **HEZEKIAH JASEYA SAISI** opposed the application through his replying affidavit sworn on 30<sup>th</sup> September, 2010. The respondent's contention is that the purported award of the Vihiga

Land Disputes Tribunal was vague, defective and incapable of being executed.

The applicant was represented by Kundu Advocate while the respondent was represented by MS Osodo Advocate. The parties filed written submissions. I have duly considered the pleadings and the written submissions.

Section 7 (2) of the Land Disputes Act sets out the role of the magistrate as follows:-

***“The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered, a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”***

The magistrate’s court can therefore not purport to interpret the award as to its legality, enforceability or otherwise. It was up to the dissatisfied party to appeal to the Provincial Appeals Committee and thereafter to the High Court or institute Judicial Review proceedings.

The Vihiga SRM’s Court is not a party to the proceedings herein. The motion is incompetent as it seeks orders against persons who are not parties to the application.

The application was brought under Order 50 rule 1 Civil Procedure Rules. It is not an application for judicial review proceedings to make the SRM,s Court Vihiga amenable to the supervisory jurisdiction of this court.

It is also observed that the magistrate made a ruling dated 9.12.09 in respect of the decree in question. It seems no appeal was preferred against the said ruling.

With the foregoing, the application is dismissed with costs to the respondents.

***Delivered, dated and signed at Kakamega in open court this 28<sup>th</sup> day of June, 2012***

**B. THURANIRA JADEN**

**J U D G E**