

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

Judicial Review 35 of 2010

HARUN KARANI

GACHOKI.....PLAINTIF

F

VERSUS

**KIRINYAGA CENTRAL LAND DISPUTES TRIBUNAL CASE NO.T.C.35/09 &
ANOTHER.....DEFENDANTS**

RULING

Harun Karani Gachoki, hereinafter referred to as the 1st interested party, took out the motion dated 25th may 2010, in which he sought for the following orders:

- ***An Order of Certiorari to remove into the High Court for the purpose of it's being quashed the Award made by the Kirinyaga Central Land Disputes Tribunal vide TC No.35 of 2009 and the judgment of the Kerugoya Principal Magistrate's Court Award Case No.5 of 2010.***
- ***The costs of the application be provided for.***

The Applicant filed a verifying affidavit he swore together with a statement of facts. When the motion came up for interpartes hearing, learned counsels appearing in the matter recorded a consent order to have the motion disposed of by written submissions.

I have considered the submissions filed by the 1st Interested Party and those filed by Elena Muthoni Karani, the 2nd Interested Party. The Respondents did not deem it fits to file any submissions. I think it is appropriate at this stage to set out the brief history behind this motion. Harun Karani Gachoki, the 1st Interested Party, was at all material times the registered proprietor of the parcel of land known as L.R. No.Mutira/Kaguyu/252. Elena Muthoni Karani, the 2nd Interested Party, is married to the 1st Interested Party. It would appear from the material placed before this court that the marriage of the duo is in doldrums. The 2nd Interested Party filed a complaint before the Kirinyaga Central Land Disputes Tribunal claiming to be entitled to a portion of L.R. No.Mutira/Kaguyu/252 vide T.C. No.35 of 2009. The Land Disputes Tribunal heard the complaint and in the end it awarded the 2nd Interested Party 2 acres to be excised from the aforesaid parcel. The 1st Interested Party was unhappy with the decision he preferred an appeal to the Central Province Land Disputes Appeals Committee vide Appeal No.4 of 2010. The Appeals committee heard the appeal and dismissed it thus upholding the decision of the Kirinyaga Central Land Disputes Tribunal. The 1st Interested Party has now these judicial review proceedings seeking to have the decision quashed.

The 1st Interested Party has raised one main ground in support of the motion, that is to say that the Land Disputes Tribunal had no jurisdiction to hear and determine a dispute in respect to title to land. The 2nd Respondent on her part was of the view that the Land Disputes Tribunal acted within its mandate. It is her argument that the tribunal merely divided the land within the definition given section 3 (1) (a) of the Land Disputes Tribunals Act No.18 of 1990. After a critical examination and consideration of the material placed before this court together with the submissions it is clear in my mind that the Land Disputes Tribunal's decision is not ambiguous. The Land Disputes Tribunal simply awarded the 2nd Interested Part 2 acres to be excised from L.R. No.Mutira/kaguyu/252. If that decision is implemented, it will mean that

title in respect of L.R. No.Mutira/Kaguyu/252 will be closed upon subdivision and new titles issued to the parties. That in my view is interfering with the ownership rights of a registered proprietor. With respect, I agree with the submission of the 1st Interested Party that the Land Disputes Tribunal acted in excess of its jurisdiction defined under S.3 (1) of the Land Disputes Tribunals Act No.18 of 1990. In the end, I find the Motion dated 25th may 2010 to be well founded. It is allowed as prayed. Save that each meets his or her own costs because they are man and wife.

Dated and delivered this 17th day of August,2012.

**J.K. SERGON
JUDGE**