



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISCELLANEOUS CIVIL APPLICATION 33 OF 2003

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

AND

IN THE MATTER OF AN APPLICATION BY DAVID MWENCHER CHONGWONY FOR ORDERS OF JUDICIAL REVIEW

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990

IN THE MATTER OF THE MT. ELGON LAND DISPUTE TRIBUNAL NO.20 OF 2002

AND

REPUBLIC.....APPLICANT

~VERSUS~

THE CHAIRMAN MT. ELGON LAND DISPUTES TRIBUNAL.....RESPONDENT

JAMES KIKECH.....INTERESTED PARTY

AND

DAVID MWENCHER CHONGWONYEX-PARTE APPLICANT

JUDGMENT

The *ex-parte* Applicant is the registered proprietor of land parcel no.Elgon/Chemoge/188 measuring 15.5 Hactares. The Interested Party went to the Mt. Elgon Land Disputes Tribunal (Respondent) claiming that the registration was obtained by fraud as he is the lawful owner of the suit land having bought it from the deceased Joseph Kutukhulu in 1968. He stated that at the time the deceased was the registered owner. Subsequent to his death, his son transferred the suit land to the *ex-parte* Applicant. The son was not the administrator of the estate of the deceased and no succession proceedings had been filed to succeed him. The *ex-parte* Applicant told the Respondent that he had bought the suit land from the deceased in 1976. Following the deceased’s death all his sons gave him the suit land.

If the *ex-parte* Applicant somehow got himself as the registered proprietor of the suit land following the deceased’s death and without there being a succession cause, then the Interested Party, who

alleged to have bought the suit land from the deceased in 1968, had a legitimate cause to complain. However, the place to lodge his complaint should have been the High Court and not the Respondent. This is because, under section 3 (1) of the Land Disputes Tribunal Act no.18 of 1990 (now repealed) the Respondent did not have the power to determine a contest between the two parties each of whom claimed to own this registered suit land (**Beatrice M'Marete v. Republic and Others, Civil Appeal no.259 of 2000 at Nyeri**). The Respondent's jurisdiction was limited to hearing and determining cases involving the division of, or the determination of boundaries to land including land held in common; a claim to occupy or work land; or trespass to land. This was a claim regarding who between the *ex-parte* Applicant and the Interested Party owned the suit land.

For want of jurisdiction, therefore, the proceedings and the decision of the Respondent were a nullity, and are removed into this court by order of Certiorari and quashed. Also a nullity were the proceedings and judgment of the court in Kimilili in RMC land case no.29 of 2002. They are also quashed. The Interested Party is ordered to pay the costs of this motion.

Dated, signed and delivered at Bungoma this 17th day of September, 2012.

A. O. MUCHELULE
JUDGE