



REPUBLIC OF KENYA

High Court at Kakamega

Miscellaneous Civil Application 31 of 2011

**IN THE MATTER OF AN APPLICATION BY CHARLES MAKUNE BOI FOR LEAVE TO
APPLY FOR ORDERS OF JUDICIAL REVIEW**

AND

**IN THE MATTER OF THE DECISION OF THE TIRIKI WEST DIVISION LAND DISPUTES
TRIBUNAL IN CASE NO. 31 OF 2011 DATED 31.3.2011 IN RESPECT OF LAND PARCEL NO.
NYANG'ORI/KAPSOTIK/025**

AND

**IN THE MATTER OF HAMISI SRM MSC. APPL. NO. 09 OF 2011 (ADOPTION OF THE
AWARD ON 16.6.2011)**

BETWEEN

REPUBLIC APPLICANT

VERSUS

THE ATTORNEY GENERAL FOR & ON BEHALF OF THE TIRIKI WEST DIVISION

LAND DISPUTES TRIBUNAL 1ST RESPONDENT

SENIOR RESIDENT MAGISTRA, HAMISI LAW COURTS2ND RESPONDENT

AND

RABECA OMITI INTERESTED PARTY

EX-PARTE: CHARLES MAKUNA BOI

R U L I N G

The Notice of Motion application dated 20.7.11 seeks orders that the applicant be granted orders of Judicial Review and in particular Orders of Certiorari and Prohibition against the decision of the Tiriki West Division Land Disputes Tribunal vide its Case No. 31 of 2011 in respect of Land Parcel No. NYANG'ORI/KAPSOTIK/25 dated 18.4.2011 and the proceedings of the Hamisi Court in Hamisi SRMC Misc. Application No. 9 of 2011 with specific reference to the reading of the said decision/award on 16.6.2011 awaiting the Ruling of the said court on 7.7.2011.

According to the statement of facts and the verifying affidavit, the Tribunal had no jurisdiction to determine matters of land ownership and therefore the Tribunal's award and the subsequent adoption of the same by the court was a nullity. The Tribunal in its decision dated 18.4.2011 made the following verdict.

“After a long discussion and deliberation from different witnesses, the elders ruled that Plot NYANG’ORI/KAPSOTIC/025 belongs to the remaining heirs of the deceased Mrs. Leba Lukhoji”

The said decision by the Tribunal encompassed both the question of land ownership and Succession issues.

The Tribunal therefore violated Section 3 (1) of the Land Disputes Tribunal Act No. 18 of 1990 which stipulates as follows:-

“Subject to this Act, all cases of a 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 Tribunal therefore acted without jurisdiction. The Tribunal's decision is therefore void ***ab initio*** and ***ultra vires***.

Consequently, the application is allowed. Each party to bear own costs.

Delivered, dated and signed at Kakamega this 18th day of December, 2012

**B. THURANIRA JADEN
J U D G E**