



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

JUDICIAL REVIEW NO.53 OF 2010

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF JUDICIAL REVIEW BY WAY
OF *CERTIORARI***

AND

**IN THE MATTER OF KIPIPIRI LAND DISPUTES TRIBUNAL CASE NO.87 OF 2006 AND
NYAHURURU P.M.C. LAND DISPUTE CASE NO.6 "B" OF 2007 BETWEEN MIRRIAM
WANJA MATHERI & MATHERI KARANJA MWANIKI *ALIAS* MATHERI KARANJA**

AND

**IN THE MATTER OF THE LAND DISPUTES TRIBUNALS ACT NO.18 OF 1990 AND THE
REGISTERED LAND ACT CAP.300 LAWS OF KENYA**

BY

REPUBLIC.....APPLICANT

VERSUS

PRINCIPAL MAGISTRATE'S COURT – NYAHURURURESPONDENT

AND

MIRRIAM WANJA MATHERI.....INTERESTED PARTY

EX-PARTE

MATHERI KARANJA MWANIKI Alias MATHERI KARANJA.....SUBJECT

RULING

The applicant, **Matheri Karanja Mwaniki**, is the registered proprietor of parcel of land known as NYANDARUA/KIPIPIRI/263 (the suit land) measuring approximately 15.5 Ha (38 acres).

Miriam Wanja Matheri, the interested party, is the applicant's first wife. In his lifetime, the applicant proposed to sub-divide and distribute the suit land to his family (the two houses). He proposed to transfer 10 acres to the house of the interested party and 26 acres to the second house.

The interested party was aggrieved and filed a reference Kipipiri Land Dispute Tribunal being case No.18 of 1996 claiming that the proposed distribution was not equitable. She also registered a caution on the suit land. The Tribunal heard the applicant and the interested party and in its decision rendered on 18th December, 2006 redistributed the suit land to the two houses in equal shares (17.5 acres each) and 3 acres to the applicant, stating that they were doing so in accordance with the Kikuyu customary law and in line with the provisions of the **Land Disputes Tribunal Act** which empowers it (the Tribunal) to, among other things, resolve disputes on the subdivision of land. The decision of the tribunal was not adopted as a judgment and decree issued until 3rd March, 2010 in the Nyahururu Principal Magistrate's court Land Dispute No.6"B" of 2007.

In his instant application, a motion, brought pursuant to leave granted on 28th April, 2010, the applicant seeks that the said judgment and decree be quashed by an order of *certiorari* as the same arises from a decision reached without or in excess of jurisdiction. The present application does not seek to quash the decision of the Tribunal, clearly because that is not permitted in view of the fact that that decision was rendered nearly five years before this application was made. Leave to seek an order of *certiorari*, it is trite learning, cannot issue to quash a decision made more than 6 months before the application for leave.

It must, however, be noted that an award or decision of the Tribunal is of no consequence until it is filed together with desposition and any documents in the magistrate's court, judgment entered and thereafter a decree issued in accordance with **Section 7** of the **Land Disputes Tribunal Act**.

I reiterate that the tribunal redistributed the suit property between the applicant's two houses. The jurisdiction of the tribunal is specified under **section 3(1)** of the **Land Disputes Tribunal Act** to include the division of land, including land held in common. What the applicant was doing before the reference to the tribunal was made was to distribute his private property to the members of his family *inter vivos*.

Did that distribution constitute division of land as envisage in **section 3(1)** aforesaid? The answer is clearly no. The Legislature in enacting the **Land Dispute Tribunals Act** did not intend to interfere with an individual's freedom to dispose of his personal property as he wished during his lifetime. The division of land envisaged in **section 3(1)** relates to a dispute involving property held either jointly or in common.

The application of Kikuyu customary law was irrelevant in the distribution of personal property *inter vivos*. It has been held that wives and children (adult children) cannot lay a claim to their husbands' or fathers' property while he is still alive. Those rights accrue only after death.

See **Muriuki Marigi Vs. Richard Marigi Muriuki and 3 others**, Civil Appeal No.189 of 1996. The Tribunal, I conclude, had no jurisdiction to entertain the dispute and exceeded its jurisdiction by

overruling the registered proprietor and redistributing private property.
For these reasons, the judgment and decree based on a flawed process is of no effect and is for quashing. It is therefore ordered that the decree of the magistrate's court dated 3rd March, 2010 is hereby quashed by an order of *certiorari*.

Costs to the applicant.

Dated, Signed and Delivered at Nakuru this 23rd day of February, 2011.

W. OUKO

JUDGE