



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**MISC. CIVIL APPL. NO. 335 OF 2011**

**MOHAMMED ABDALLA GOSI .....APPLICANT**

**VERSUS**

**MOHAMED ABDALLA MASARA  
MWANA MWINYI ABDALLA**

**MWANAISHA ALI .....RESPONDENT**

**R U L I N G**

I have considered the exparte application before me.

Firstly, the Award or Decision of the Provincial Land Appeal Tribunal Court made on 24.07.2007 in Land Appeal No. LND/TA/227 of 2002 set aside the Award of the Matuga Land Disputed Tribunal. The Provincial Land Appeal Tribunal found that the land belongs to the Applicant and his family.

The Appeal was allowed with costs.

I have read the Land Dispute Tribunal Act. The said Appeal ends the matter if it was not appealed from under S. 8 (9) of the Act to the High Court. As the appeal set aside the earlier award, the only issue to execute is for costs. The Appeals Tribunal did not order eviction which it could not in law. The situation goes back to the status quo ante.

Any question of eviction if there are no other proceedings would be the subject of new civil proceedings for eviction etc in the High court or Magistrate's Court depending on the value of the subject matter.

I hold that this court has no jurisdiction to make the orders sought. Application is not suitable.

Secondly, I do find that there exist Miscellaneous Civil Application No. 1025 of 2007 in Nairobi in which there is a Notice of Motion for judicial review orders of certiorari is pending. It is intended to quash the decision dated 24.07.07 of the Appeal's Tribunal. These particulars are given by the Applicant. If the Respondent filed it out of time, it can only be challenged in the said proceedings. If the stay lapsed then the orders to this effect can only be confirmed in the said case in Nairobi. Since there are pending proceedings then the Applicant is obliged to discharge the orders jointly or strike out the Notice of Motion pending. Application is disallowed with no order as to costs.

**Dated and delivered at Mombasa this 6<sup>th</sup> day of May 2011.**

**M. K. IBRAHIM  
J U D G E**

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**.....RESPONDENT**

**Coram**

Ibrahim, J

In Chambers

**ORDER**

Upon consideration after delivery of Ruling I do hereby direct that this matter be mentioned before me on **27/6/2011** so that directions can be given in respect of Nairobi Miscellaneous Civil Application **No.1025 of 2007**. This court recommends that the said case file be brought to Mombasa for hearing. The Court cannot make such orders without hearing the parties in case it affects their rights etc. This order to be served on the concerned advocates.

**Dated at Mombasa this 9<sup>th</sup> day of May 2011.**

**M. K. IBRAHIM  
J U D G E**