



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS APPLICATION NO. 6 OF 2010**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**1. MURANG'A SOUTH LAND**

**DISPUTES TRIBUNAL ..... 1<sup>ST</sup> RESPONDENT**

**2. CHIEF MAGISTRATE COURT THIKA ..... 2<sup>ND</sup> RESPONDENT**

**3. PETER KIBERA MUIRURI ..... 3<sup>RD</sup> RESPONDENT  
EX PARTE ..... SIMON MUIRURI KIBERA**

**RULING**

This is an application by Simon Muiruri Kibera, the ex parte applicant hereinafter referred to as “**the applicant**” seeking the following orders:

- 1. An order of certiorari to remove into this court for purposes of quashing all the proceedings and award by Muranga South Land Disputes Tribunal dated 22<sup>nd</sup> June, 2009 in respect of land parcel LOC 5/KAGUNDUINI/605, hereinafter referred to as “the suit land”.**
- 2. An order of certiorari to remove into this court and quash the proceedings and decree of the Chief Magistrate’s Court, Thika given on 6<sup>th</sup> October 2009 adopting the award of the Murang’a South Land Disputes Tribunal in respect of the suit land.**

The application was supported by a statutory statement and a verifying affidavit sworn by the applicant.

The applicant is the registered proprietor of the suit land which measures 0.99 hectares. The 3<sup>rd</sup> respondent is the applicant’s biological son. The applicant had married the 3<sup>rd</sup> respondent’s mother in 1950 but they separated in 1975 and the applicant married another wife. The marriage between the applicant and the 3<sup>rd</sup> respondent’s mother was dissolved in 1983 vide Divorce Cause No. 2 of 1983 at Thika District Magistrates Court.

The 3<sup>rd</sup> respondent was living with his mother but when the mother died in 2002 the 3<sup>rd</sup> respondent raised a claim over the suit land, saying that he wanted to be allocated a portion thereof so that he could bury the remains of his mother. The claim was heard by the Chief Magistrate’s Court at Thika and dismissed. Sometimes in June 2009 the 3<sup>rd</sup> respondent filed Case Number 34/09 before the 1<sup>st</sup> respondent claiming a share of the suit land. The tribunal heard the matter and in its ruling directed the area Land Registrar and the District Surveyor to subdivide the land into two portions and register one half thereof in

the name of the 3<sup>rd</sup> respondent's family and the other half in the name of the applicant's second family. The tribunal further ordered the 3<sup>rd</sup> respondent to return his father's land and live in the house which used to belong to his mother. The said decision was thereafter adopted by the 2<sup>nd</sup> respondent as a judgment of the court.

The applicant now contends that the tribunal had no jurisdiction to make the aforesaid orders since the suit land was lawfully registered in his name and he could not therefore be forced to divide the same between his two houses in his lifetime.

None of the respondents filed any response to the applicant's claim.

The jurisdiction of a Land Disputes Tribunal is stipulated by **Section 3(1)** of the **Land Disputes Tribunals Act** which states as follows:

**“3(1) 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;**  
**or**
- (b) a claim to occupy or work land; or**
- (c) trespass to land, shall be heard and determined by the tribunal established under Section 4.”**

In making the aforesaid award the 1<sup>st</sup> respondent exceeded its jurisdiction in that it violated the applicant's right of proprietorship over the suit land as guaranteed by **Section 27** of the **Registered Land Act**. A land tribunal has no power to adjudicate over the issue of title to land. See the Court of Appeal decision of **JOTHAM AMUNAVI v THE CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL & ANOTHER** Civil Appeal No. 256 of 2002. The court held:

**“It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3(1) of the land disputes tribunals act. Such a dispute can only be tried by the high court or by the Resident Magistrates Court in cases where such latter court has jurisdiction.”**

Although the applicant acknowledged that the 3<sup>rd</sup> respondent was his son, there is no statutory or customary law that requires a father to distribute his land among his children during his lifetime.

A decision that is made by a tribunal in excess of its jurisdiction is amenable to a judicial review order of certiorari to quash the same. The adoption of the tribunal's decision by the 2<sup>nd</sup> respondent was of no legal consequence since the decision was void *ab initio*.

For these reasons, I grant the orders sought by the applicant. The 3<sup>rd</sup> respondent shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30<sup>TH</sup> DAY OF JUNE, 2011.**

**D. MUSINGA**  
**JUDGE**

**In the presence of:**

**Jane – Court Clerk**

**Mr. Khaseke for Mr. Kaniro for the Applicant**

**No appearance for the Respondent**