



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
JUDICIAL REVIEW NO. 64 OF 2010

REPUBLIC.....APPLICANT

VERSUS

KIRINYAGA CENTRAL
LAND DISPUTES.....1ST RESPONDENT
SRM COURT KERUGOYA.....2ND RESPONDENT
CHARLES MURIUKI GITHINJI.....3RD RESPONDENT

AND

PRISCILLA WANJIKU.....EXPARTE APPLICANT

R U L I N G

The *ex parte* Applicant is the mother of the 3rd Respondent. Her husband (who was the father of the 3rd Respondent) was the deceased Henry Githinji Munyua who died in 2005. The *ex parte* Applicant went to the 1st Respondent (the Tribunal) claiming land parcel MUTIRA/KAGUYU/1907 which is registered in the name of the 3rd Respondent. The Tribunal found that the parcel had been bought for the deceased from Faith Wambui Kinyanjui by the 3rd Respondent. It was registered in the name of the deceased who had subsequently gifted it to the 3rd Respondent.

I find that, in accepting to determine who between the *ex parte* Applicant and the 3rd Respondent was the rightful owner of this registered land, the Tribunal went beyond its mandate which is contained in Section 3(1) of the Land Disputes Tribunals Act, 1990 (***WEPUKHULU, ASMAN MALOBA & ANOTHER VS FRANCIS WAKWABUBI BIKETI, Civil Appeal No. 137 of 2001 at Kisumu***). The decision of the Tribunal was consequently a nullity.

They were three other parcels, MUTIRA/KAGUYU/1149, MUTIRA/KAGUYU/1045 and MUTIRA/KAGUYU/272, that the Tribunal made findings on. The parcels were in the names of the deceased and were the subject of proceedings in ***High Court Succession Case No. 92 of 2009 at Embu***. The Tribunal purported to share out these parcels to the family of the deceased. That was illegal as it had no power over the parcels. It had no power to deal with a matter that the High Court was properly seized of.

The consequent adoption of the award of the Tribunal and the decree that was issued by the 2nd

Respondent were both a nullity.

The motion is allowed. By order of Certiorari the decision of the Tribunal and the order and decree of the 2nd Respondent are all removed into this court and quashed. The 2nd Respondent is prohibited from dealing with the dispute as filed by the 1st Respondent.

I agree with Mr. Ngige for the 3rd Respondent that it was the *exparte* Applicant who initiated the complaint that led to these offending decisions and orders. She dragged the 3rd Respondent to the Tribunal, to the 2nd Respondent and to this court. She is condemned to pay the costs of this application.

DATED, DELIVERED AND SIGNED AT EMBU THIS 18TH DAY OF JULY 2011.

A. O. MUCHELULE
JUDGE