



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**MISC.APPLICATION NO. 27 OF 2008**  
**IN THE MATTER OF LAND DISPUTES TRIBUNAL & REGISTERED LAND ACTS**

**IN THE MATTER OF WEBUYE LAND DISPUTES TRIBUNAL**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**AND**

**CHAIRMAN WEBUYE LAND DISPUTES TRIBUNAL.....RESPONDENT  
AND ZIPPORAH N. WANYAMA.....INTERESTED PARTY**

**VERSUS**

**MICHAEL WANYAMA.....EX PARTE APPLICANT**

**J U D G E M E N T**

The Ex Parte Applicant, Micheal Wanyama, in a Notice of Motion dated 22.2.2008, sought an order of Certiorari to remove into this court for quashing, an award of a section of a piece of land known as Bokoli/Bokoli/523 which the Webuye Land Disputes Tribunal made in favour of the Interested Party herein. The basis of the Ex Parte Applicants prayer, in summary, is that the said Award was made in excess of the Tribunal's powers and jurisdiction.

In the said Award, the Webuye Land Disputes Tribunal ordered that Land parcel No.Bokoli/Bokoli/523 be subdivided into five portions of an acre each, and one be given to the Interested Party.

It is not denied by the Respondent or the Interested Party that such was indeed the order of the Tribunal. The only issue to determine therefore is whether or not the Webuye Land Disputes Tribunal had such power.

There is no doubt in my mind that the effect of the order would be to subdivide the parcel of land in question. This will definitely result into destroying the present title and creating several others to each subdivision. Subdivision of the land is beyond the right to occupy or work the land or even to fix boundaries which existed and were recognized under registration rights of the law under which the land was registered. As stated by the Court of Appeal in Beatrice M Marete vs. Republic & 3 others in Civil Appeal No 259 of 2000 –

**“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupy or work the land, but a claim to ownership, taking into account the provisions of Section 3 (1) of the Act, as what was before the Tribunal. We are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land Registered under Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction.”**

As already earlier indicated herein, ordering a subdivision or a transfer of registered land by the Tribunal, is actually interfering with substantive and/or beneficial interests in registered land which is clearly beyond the power granted to such tribunals under Section 3 (1) of the Land Disputes Tribunal Act. The award by the Webuye Land Disputes Tribunal relevant to this case was accordingly ultra vires its powers. Whatever its merits may be as it indeed appears in the record, cannot cure the fatal defect.

The order or award of the Webuye Land Disputes Tribunal in the Tribunal’s case no.20 of 2007, dated 7.12.2007, cannot therefore be left to stand. An order of Certiorari shall therefore forthwith issue to remove the award to this court to quash it. Orders shall be issued accordingly.

As to costs, the Interested party is the wife of the Ex Parte Applicant who displaced the latter and her children from the land for whatever reasons. It is the considered view of the court that each party bears own costs.

Finally, it should be noted that the orders herein, do not interfere with the Interested parties other rights, if any, over the land relevant to this suit.

Dated and delivered at Bungoma this 10<sup>th</sup> day of October 2011.

**D.A. ONYANCHA**  
**J U D G E**