



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT EMBU**

**Miscellaneous Application 189A of 2005**

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**JEREMIAH GITHINJI MAHUGU.....APPLICANT**

**VERSUS**

**THE CHAIRMAN MATHIOYA LDT.....1<sup>ST</sup> RESPONDENT  
ELIZABETH WAITHIRA WATARA.....2<sup>ND</sup> RESPONDENT**

**R U L I N G**

Leave to file this notice of motion was granted by my sister Judge Khaminwa on 2/11/2005. The main application was filed on 19/12/2005. The matter came up for hearing on 10/5/2006 but the same could not proceed as counsel for the ex-parte applicant was said to be unwell. He nonetheless appears to have gone to slumber and a hearing date was taken 3 years later i.e on 12/8/2009 when the matter was scheduled for hearing on 2/11/2009.

The ex-parte applicant seeks an order of certiorari to remove into this court for quashing the award of the Mathioya Land Disputes Tribunal made on 1/11/2005 and the order of the Resident Magistrate's Court at Kangema made on 18/11/2005 for purposes of quashing the same.

The main ground on which the application is based is that the Tribunal exceeded its jurisdiction and thus acted ultra vires in determining an issue pertaining to the ownership of land which is registered under the Registered Land Act Cap 300 of the Laws of Kenya.

Upon perusal of the statement of facts and the verifying affidavit and the annexure thereto, it is clear that the land in question was registered in the names of Jeremiah Githinji Mahugu as the absolute proprietor. The award in question stated that the land belonged to one Elizabeth Waithira Watara and ordered that the Title Deed to that effect be issued to her.

In effect, the Tribunal divested the registered owner of his proprietary rights under Cap 300 of the Laws of Kenya and directed that his Title Deed be cancelled. Such an order was certainly outside the Tribunal's mandate as clearly defined under Section 3 (1) of the Land Disputes Tribunal Act. Issues pertaining to ownership of registered land is in the domain of the High Court by dint of Section 159 of the Registered Land Act or the Resident Magistrate where the pecuniary value of the said land allows such. Cancellation of a Title Deed to registered land can also only be dealt with by the High Court pursuant to Section 143 of the Registered Land Act.

In sum, the Tribunal lacked jurisdiction to determine the dispute in question. Their award was therefore null and void for all intents and purposes. The Notice of Motion therefore succeeds. The same is allowed. The said award along with the Judgment of the Kangema Resident Magistrate adopting the same are called into this court and the same are hereby quashed.

Each party will bear its own costs of the notice of motion.

**W. KARANJA**  
**JUDGE**

Delivered, signed and dated at Embu this 4th day of March 2010

**In presence of:- Mr. Kagwi for ex-parte applicant.**