



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

Miscellaneous

Civil Application 14 of 2009

JOSEPH MBOGO MWANIKI.....APPLICANT

VERSUS

**LUCY NJOKI NJUKI.....1ST RESPONDENT
THE CHAIRMAN EMBU DISTRICT LAND
DISPUTE TRIBUNAL.....2ND RESPONDENT**

R U L I N G

Leave to file an application for orders of certiorari was granted by this court on 29/6/2009. The notice of motion was then filed on 6/7/2009. The ex-parte applicant prays that this honourable court issues an order of certiorari to remove into this court the proceedings and order of the ***Embu District Land Disputes Tribunal No.25 of 2008 and award No.40 of 2008*** filed in the Senior Principal Magistrate Court at Embu for purposes of quashing. The application is basically premised on the issue of lack of jurisdiction on the part of the Tribunal. In its award, the Tribunal ordered that the Land Registrar should issue the 2nd Respondent with a Title deed for the plot she had bought from the ex-parte applicant. It further ordered specific performance in that it gave orders that Lucy deposits the balance of the purchase price of Kshs.29,000 in court for the owner to collect. It also gave orders that the executive officer signs all the documents to effect the said transfer.

Clearly, the tribunal has no such powers. It cannot decide on issues of ownership of registered land. It cannot make orders of specific performance in order to enforce a contract between -2 parties; nor does it have jurisdiction to direct the court's Executive Officer to sign the forms or do anything else. All these orders were therefore outside the jurisdiction of the land Disputes Tribunal as conferred on it under Section 3 (1) of the Land Disputes Tribunal Act No.18 of 1991. Their award was therefore ultra vires their jurisdiction and it ought to be quashed.

In the circumstances, I allow this motion and order that the said award of the Land Disputes Tribunal and the Judgment of the Court adopting the same are called into this court and the same are hereby quashed.

But for the fact that the 2nd Respondent filed her matter before the wrong forum, she had a good case. I

will not therefore penalize her by asking her to pay costs herein. There will therefore be an order that the ex-parte applicant bears his own costs of this case.

The 2nd respondent can still file her suit before a court of competent jurisdiction.

**W. KARANJA
JUDGE**

Delivered, dated and signed at Embu this...12.....day of May 2010.

In presence of:-