



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KITALE
Miscellaneous Civil Application 25 of 2009**

REPUBLIC.....APPLICANT.

VERSUS

**KWANZA LAND DISPUTES TRIBUNAL. COMPRISING OF
WAFULA BIBI)
HENRY MUNDIA)
MATAYO NABILIKI).....1ST RESPONDENT.

THE CM'S COURT, KITALE.....2ND RESPONDENT.

WINNIE KUMARY.....INTERESTED PARTY.**

R U L I N G.

The Notice of Motion is dated 16th April, 2009 pursuant to the provisions of sections 8 and 9 of the Law Reform Act and orders LIII Rules 3 and 4 of the Civil Procedure Rules.

It seeks orders:-

1. **THAT**, an order of judicial review (certiorari) be issued to remove into this honourable court and quash the award of the Kwanza Land Disputes Tribunal which was read and adopted as a judgment of the court on 3/3/2009 in Kitale CMC Land Case No. 107 of 2008.
2. **THAT**, the costs of this application be provided for.

It is based on the grounds:

1. **THAT**, leave has been granted to file this application.
2. **THAT**, the Tribunal acted without jurisdiction when it adjudicated a dispute over land registered under the Registered Land Act.
3. **THAT**, the Tribunal acted without jurisdiction when it purported to distribute the property of a person whom it presumed to be dead, although that person is still alive.
4. **THAT**, the Tribunal acted without jurisdiction when it adjudicated a dispute over legal ownership of land.
5. **THAT**, the Tribunal acted without jurisdiction when it purported to make a declaration of trust.
6. **THAT**, the Tribunal violated the rules of natural justice when it condemned the applicant without giving him a hearing.

It is predicated upon the annexed affidavit of Francis Kirui sworn on the 16th day of April, 2009 and the statement of particulars of the applicant, Francis Kirui Chepkongin dated 19th March, 2009.

On behalf of the applicant it was argued that the land over which the Tribunal adjudicated (Kwanza/Namanjalala 4/14) is one registered under the Registered Land Act (Cap 300) Laws of Kenya. A copy of the title Deed is exhibited as "FCK 4". Being so registered the Tribunal had no jurisdiction to adjudicate over its ownership.

That the award of the Tribunal was made on the basis that the husband of the claimant died. In so doing, the Tribunal purported to

distribute the estate of the deceased without jurisdiction.

That in making the award the Tribunal purported to declare that there was a trust between the applicant and the deceased. The Tribunal had no jurisdiction to declare a trust or to adjudicate upon a trust which is the preserve of the High Court.

The applicants last and final position is that he was not survived to appear before the Kwanza Land Disputes Tribunal to defend the claimants claim contrary to the dictates of the rules of natural justice.

The application was served on the respondents who failed to attend court. On application I granted leave to the applicant to proceed ex-parte.

I have anxiously analysed and considered the evidence in support of the application.

One, that the award was made on the basis of the fact that the husband of the claimant was dead. Thus the Tribunal embarked on the exercise of the distribution of the estate which it had no jurisdiction so to do.

Two, that in making the award the Tribunal purported to declare a trust between the applicant and his deceased brother. Yet the Tribunal had no jurisdiction so to do. Declaration of trust is the preserve of the High Court.

Last but not least the applicant's position is that he was not summoned to appear before the Kwanza Land Disputes Tribunal to defend the claim. In the absence of evidence in rebuttal I find this to be contrary to the hallowed principle of natural justice - no one can be condemned unheard.

For those reasons the application succeeds. There shall be orders in terms of prayer 1 and 2 of the application.

Dated and delivered at Kitale this 29th day of June, 2010.

N.R.O. OMBIJA.

JUDGE.

N/A for Applicant.

N/A for Respondent.