



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

**AT KISII**

**Miscellaneous Civil Application 25 of 2008**

REPUBLIC.....APPLICANT

VERSUS

KURIA LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT

THE RESIDENT MAGISTRATE'S COURT AT KEHANCHA.....2<sup>ND</sup> RESPONDENT

AND

JAMES MWITA.....INTERESTED PARTY

**RULING**

The ex-parte applicant filed an application dated 12<sup>th</sup> October 2007 seeking an order of certiorari to remove into this court and quash the proceedings and the decision delivered by the 1<sup>st</sup> respondent on 25<sup>th</sup> August 2007 in Kuria Land Disputes Tribunal Case No. 14 of 2007. He also sought a similar order to quash the decision of the 2<sup>nd</sup> respondent which adopted the decision of the 1<sup>st</sup> respondent.

The application was made on the grounds, *inter alia*, that:

- The 1<sup>st</sup> respondent acted without jurisdiction as granted by the provisions of **section 3 (1) of the Land Disputes Tribunals Act No. 18 of 1990.**
- The 1<sup>st</sup> respondent wrongfully entered judgment knowing that the dispute involved title obtained as a first registration.

The ex-parte applicant swore an affidavit in support of the application. She is the legal representative of the estate of **Masike Gorio Marinyo**, hereinafter referred to as "**the deceased**" who died in 1997. The deceased and Mosei Charua Gisiwawa were registered as the proprietors of **L.R. No. Bukira/Bwisaboka/36**, measuring 29 hectares, hereinafter referred to as "**the suit property.**" The two proprietors owned the suit property in common. Charua Mosei Gisiwawa is also deceased.

On 6<sup>th</sup> June 2007 the interested party, who is a grandson of Charua Mosei Gisiwawa, filed a suit before the 1<sup>st</sup> respondent claiming that his grandfather was the owner of the suit land. The tribunal proceeded to hear the claim and decided in favour of the interested party notwithstanding that the registered proprietors of the suit property were long dead. The tribunals decided that the ex-parte applicant be given 12 hectares of the suit property while the interested party and his family were to get 17 hectares. The said award was subsequently adopted by the 2<sup>nd</sup> respondent.

The interested party filed a replying affidavit and deposed that the proceedings before the 1<sup>st</sup> respondent were conducted in the presence of both himself as well as the ex-parte applicant. The decision of the 1<sup>st</sup> respondent was thereafter adopted by the 2<sup>nd</sup> respondent. He further stated that the application was bad in law because the orders sought therein are at variance with leave that was granted to commence the proceedings. He also defended the award by the 1<sup>st</sup> respondent.

Mr. Bosire for the ex-parte applicant and Mr. Nyambati for the interested party made their respective submissions which I have duly considered.

Under **section 3 (1)** of the **Land Disputes Tribunals Act**, a Tribunal has power to deal with a dispute involving:

**“(a) Division of, or the determination of  
boundaries to land including land  
held in common.”**

However, a Tribunal does not have jurisdiction to determine dispute involving ownership of a registered land. In the matter that was before the Tribunal, the suit property was registered in the names of 2 people who were both deceased.

The ex-parte applicant had obtained letters of administration in respect of the estate of her mother, **Maseke Gorio Marinyo** but the interested party had not obtained letters of administration in respect of the estate of the other co-owner, **Moseti Charua Gisiwawa**. He therefore had no locus standi to institute the proceedings.

The Tribunal awarded him 17 hectares of the suit property and directed the district surveyor to sub divide the land. The Tribunal further directed the district land registrar to issue new titles to the ex-parte applicant and the interested party.

The Tribunal thus exceeded its jurisdiction. Its award was a nullity. The same applies to the adoption proceedings.

Consequently, I grant the prayers as sought. The interested party shall bear the costs of the application.

**DATED, SIGNED AND DELIVERED AT KISII THIS 22<sup>ND</sup> DAY OF JUNE, 2010.**

**D. MUSINGA**  
**JUDGE.**  
**22/6/2010**

Before D. Musinga, J.

Mobisa – cc

Mr. Nyambati for the Interested Party

N/A for the Respondents

**Court:** Ruling delivered in open court on 22<sup>nd</sup> June, 2010.

**D.**

**MUSINGA**

**JUDGE.**