



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**MISC. CIVIL APPLICATION NO. 76 OF 2008**

**IN THE MATTER OF: AN APPLICATION BY JAMES OCHIENG RABEL**

**FOR JUDICIAL REVIEW (CERTIORARI AND PROHIBITION)**

**AND**

**IN THE MATTER OF: LAND DISPUTE TRIBUNAL ACT, NO. 18 OF 1990**

**AND**

**IN THE MATTER OF: RONGO LAND DISPUTES TRIBUNAL (RONGO DIVISION)**

**AND**

**IN THE MATTER OF: SENIOR RESIDENT MAGISTRATE'S COURT AT RONGO**

**AND**

**IN THE MATTER OF: RONGO SRMCC MISC. APPLICATION NO. 28 OF 2008**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**RONGO LAND DISPUTES TRIBUNAL.....1<sup>ST</sup>  
RESPONDENT**

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

**AND**

**DAVID OTIENO ADEMBA.....INTERESTED  
PARTY**

**AND**

**EX-PARTE**  
**JAMES OCHIENG RABEL Suing as the Legal Representative of the**  
**Estate of WALTER RABEL OTIENO – DECEASED**

**RULING**

The ex-parte applicant is the legal representative of the estate of **Walter Rabel Otieno**. He filed an application by way of the Notice of Motion seeking an order for judicial review in the nature of Certiorari to remove into this court and quash the proceedings and decision of the 1<sup>st</sup> respondent dated 16<sup>th</sup> September 2008 and the adoption proceedings of the said decision by the 2<sup>nd</sup> respondent concerning **Land Parcel No. Kamagambo/Kanyawanga/318**, hereinafter referred to as “**the suit property**.” The 1<sup>st</sup> respondent directed that the interested party be registered as the proprietor thereof in place of **Walter Rabel Otieno**, hereinafter referred to as “**the deceased**.” The ex-parte applicant also sought an order of judicial review in the nature of prohibition to prohibit the 1<sup>st</sup> respondent from further hearing or deliberating upon any claim relating to ownership of the suit property. He also sought a similar order as against the 2<sup>nd</sup> respondent to prohibit any further proceedings or dealing in respect of the suit land.

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

- The 1<sup>st</sup> respondent exceeded its jurisdiction when it dealt with an issue concerning ownership of the suit property in terms of the provisions of **section 3 (1)** of the **Lands Disputes Tribunals Act**.
- The proceedings and decision of the 1<sup>st</sup> respondent are null and void.
- The 1<sup>st</sup> respondent was illegally constituted in so far as the panel of elders who sat and deliberated on the matter were never gazetted or appointed by the District Commissioner, Rongo, as by law required.

The ex-parte applicant swore an affidavit in support of the application and stated that the deceased died on 22<sup>nd</sup> July 1987. The deceased was the registered proprietor of the suit property pursuant to the provisions of the **Registered Land Act**. A title deed was issued to him on 2<sup>nd</sup> March 1981. In June 2008 the interested party filed proceedings before the 1<sup>st</sup> respondent claiming ownership of the suit property. The 1<sup>st</sup> respondent awarded the suit property to the interested party. The said decision was adopted by the 2<sup>nd</sup> respondent on 24<sup>th</sup> October 2008.

The interested party filed a replying affidavit and stated that the suit property was first registered in the name of **Obinga Oyugi** who was his grandfather. The respondent’s father, **Ademba Obinga**, was the only child of Obinga Oyugi. When the respondent’s grandfather died, Walter Rabel Otieno commenced succession proceedings and had the land registered in his name. That was improper in law, he stated. The interested party added that the suit property is an ancestral land inherited from his grandfather and the ex-parte applicant had purported to disinherit them.

The jurisdiction of a Land Dispute Tribunal is clearly set out under **section 3 (1)** of the **Land Disputes Tribunals Act**. Such a tribunal can only deal with cases of a civil nature involving a dispute as to:

- (a) **the division of, or the determination of boundaries to land, including land held in common;**
- (b) **a claim to occupy of work land;**
- (c) **trespass to land.**

Such a tribunal cannot adjudicate on issues of ownership of a registered land. See **ASMAN MALOBA**

**WEPUKHULU & ANOTHER –VS- FRANCIS WAKWABURI BIKET**, Civil Appeal No. 157 of 2001. The 1<sup>st</sup> respondent clearly acted without jurisdiction. That being the case, its decision as well as the adoption proceedings before the 2<sup>nd</sup> respondent were a nullity.

If the interested party believed that the deceased was wrongfully registered as the proprietor of the suit property, he should have filed an appropriate claim in the high court but not before the 1<sup>st</sup> respondent.

I grant the orders as sought by the ex-parte applicant. The interested party and the 1<sup>st</sup> respondent shall bear the costs of this application.

**DATED, SIGNED AND DELIVERED AT KISII THIS 29<sup>TH</sup> DAY OF JULY, 2010.**

**D. MUSINGA**

**JUDGE.**

**29/7/2010**

Before D. Musinga, J.

Mobisa – cc

Mr. Oguttu for the Ex-parte Applicant

N/A for the Interested Party

**Court:** Ruling delivered on 29<sup>th</sup> July, 2010 in open court.

**D. MUSINGA**

**JUDGE.**