



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

**AT EMBU**

**Judicial Review 50 of 2009**

**PETERSON KAMAU MUTO.....1<sup>ST</sup> APPLICANT**

**ERASMUS NJERU MUTO.....2<sup>ND</sup> APPLICANT**

**VERSUS**

**EMBU WEST DISTRICT TRIBUNAL.....RESPONDENT**

**R U L I N G**

Erasmus Njiru Muto who is named as the interested party in this matter was the claimant in Embu West District Land Tribunal Case No. 53/2008. The ex-parte Applicant herein was the Defendant in the Tribunal Case. His prayer to the Tribunal was for the removal of the caution lodged against Land Parcel No. **KYENI/KIGUMO/1829**. The Tribunal went ahead and heard the dispute and made a finding that the land in question belonged to the Respondent and ‘ordered’ the Land Registrar Embu West to remove the caution in question.

The ex-parte Applicant moved this court vide the notice of motion dated 8.03.2010 to have the said orders quashed.

His application is basically premised on 2 grounds:- That the Tribunal had no jurisdiction to deal with the land belonging to a deceased person and secondly that the Tribunal has no jurisdiction to order the Land Registrar to remove a caution as that is the preserve of the court or the Land Registrar himself/herself. I have given careful consideration to the said grounds and the statement of facts and the rival affidavits.

Firstly as I told the Respondent in court his replying affidavit was defective as it was not signed. It therefore offended the provisions of the Oaths and Statutory declarations Act (Cap 15 of the laws of Kenya). The same ideally should have been struck out but since the respondent is a layman, I decided in the interest of justice the expeditious resolution of this matter not to strike it out. I will therefore determine this motion on its merit. I have studied the said affidavit. It is true that the Respondent bought some land from the deceased registered owner. That is nonetheless not the issue here. The issue at hand is whether the Tribunal had jurisdiction to hear and determine a claim of removal of a caution on the land in question. I must agree with counsel for the ex-parte Applicant that the Tribunal did not have such jurisdiction.

The Tribunal cannot order the Registrar of Lands to perform any of the duties vested in him by law. It could not therefore purport to order or direct the land Registrar Embu West to vacate the caution. That can only be done by the Registrar on his own motion or on orders from a court of competent jurisdiction.

The Tribunal could not deal with land belonging to a deceased person while his legal representative or administrator of his estate was not party to the said proceedings. The award of the Embu West Land Tribunal was therefore illegal and irregular. It was made in excess of the jurisdiction of the Tribunal as clearly stipulated in section 3(1) of the Land Disputes Tribunal Act

No. 18 of 1990. The Application therefore has merit. The same is allowed. The impugned award is removed into this court and the same is hereby quashed.

Each party will bear his own costs.

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

Delivered, dated and signed at Embu this 19<sup>th</sup> day of July 2010.

**In presence of:- Mr. Kathungu for ex-parte Applicant and both parties.**