



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

Miscellaneous Civil Application 210 of 2009

REPUBLIC.....APPLICANT

~VRS~

THE CHAIRMAN, MT. ELGON LAND DISPUTES TRIBUNAL.....RESPONDENT

EX-PARTE

JACKSON KIREMBU KITUI.....APPLICANT

~VRS~

ERICK KIKAI KITUI.....INTERESTED PARTY

RULING

The Ex-parte Applicant Jackson Kirembu Kitui in the judicial review application dated 26/05/2009 seeks for orders that the award of Mt. Elgon Land Disputes Tribunal be removed into this court and quashed accordingly. The grounds contained in the supporting affidavit are that the tribunal exceeded its jurisdiction when it ordered sub-division of L. R. No. North Malakisi/North Wamono/896 giving a portion to the Interested Party who was claiming interest as a purchaser. The award was adopted as judgment on 6/10/2009 by Kimilili Senior Resident Magistrate.

The application was served on the Interested party and all other parties named in this application. None of the parties filed a reply to the application. The court proceeded with the application as unopposed.

The jurisdiction of the tribunal is provided for by section 3 (1) of the Land Disputes Tribunal Act which provides:

“1) Subject to this Act, all cases of a civil nature involving a dispute as to:

- a) The division of, of the determination of boundaries to land, including land held in common:**
- b) A claim to occupy or work land; or:**
- c) Trespass to land; shall be heard and determined by a tribunal established under section 4.”**

The claim of the Interested Party before the tribunal was that he purchased a portion of land from the Interested Party which had been allocated to him. The parcel was said to be among others given to the brother of the Applicant. Parcel number N. Malakisi/N. Wamono/896 had not been sub-divided after the death of their deceased father. The tribunal ordered that the land be sub-divided and the Interested party be given two (2) acres. In the award, the tribunal exceeded its jurisdiction. Under section 3 (1) of the Act, the tribunal has no jurisdiction to determine matters relating to title and to registered land. The land in issue is registered under the Registered Land Act, Cap 300. Section 159 of the Act confers jurisdiction of registered land to the High Court and the Resident Magistrate’s Court depending on the value of the land. The tribunal therefore had no jurisdiction to hear the matter before it. The award of Mt. Elgon Land Disputes Tribunal on land

reference

no.N. Malakisi/N.Wamono/896 as adopted by Kimilili SRM Court is null and void for want of jurisdiction.

Mr. Situma raised the issue of the award of the tribunal not being signed by all the members of the tribunal. This is a point dealing with the merit of the award which is not the duty of this court to determine. In judicial review proceedings, the court will only concern itself with whether the body that made the decision sought to be quashed had the authority to do so.

It is my finding that the application before me is merited. I allow the same accordingly as prayed in the motion. The costs of these proceedings shall be paid by the Interested Party to the Applicants.

F. N. MUCHEMI
JUDGE

Ruling dated and delivered on the 7th day of July, 2010 in the presence of Mr. Situma for Ex-parte Applicant.

F. N. MUCHEMI
JUDGE