



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU

JUDICIAL REVIEW NO. 47 OF 2009

HELLEN WANGUI NJIRU.....APPLICANT

VERSUS

**MBEEREDISTRICTLAND DISPUTES
TRIBUNAL & ANOTHER.....RESPONDENTS**

R U L I N G

The ex-parte Applicant is seeking an order of certiorari to remove into this court and quash the decision of Mbeere North District Land Disputes Tribunal Committee dated 14.05.09 and read on 6.08.2009 and adopted as a judgment of the court.

The same is premised on the 6 grounds on its face and on the supporting affidavit of the ex-parte Applicant dated 29.04.2010. The main ground is that the land in question is duly registered in the names of the ex-parte Applicant's late father.

The said father died in 1987 which was long before the matter before the Tribunal was filed. The deceased one Njiru Mbarire was named as the defendant in those proceedings yet he was dead. These proceedings were therefore fatally procedurally defective as a dead person could not defend his case. The plaintiff ought to have sued whoever was the legal representative of the estate of the deceased. The said proceedings were therefore grossly irregular and unprocedural and would call for judicial review action from this court.

Secondly and which is most important is the ground that the Tribunal determined ownership of Registered Land. It divested the ownership of **Parcel No. EVURORE/EVURORE/435** from the late Ileri Njeru and purported to vest the same on one RUNJI ITA WAWERU. The Tribunal had no jurisdiction to interfere in the rights of a registered owner of land and nor does it have the jurisdiction to cancel a Title Deed. Those powers are clearly not included under Section 3(1) of the Land Disputes Tribunal Act.

Any award or judgment made without or in excess of jurisdiction is null and void and calls for quashing.

The court would also like to state that the Notice of Motion seeking the certiorari orders was not opposed and the 3rd Respondent even failed to attend court for the hearing of the same in spite of being properly served.

For the foregoing reasons, I find that the Notice of Motion must succeed. I therefore allow the same and order that the impugned Award along with the Siakago Resident Magistrate's court orders adopting the same are removed into this court and the same are hereby quashed.

There shall be no order for costs as the motion was not defended.

W. KARANJA
JUDGE

Delivered, signed and dated at Embu this 13th day of October 2010.

In presence of:- Mr. Kimani for ex-parte Applicant.