



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

**CIVIL APPEAL NO. 12 OF 2005**

**ANTONY GICHOBI NJAGI.....APPELLANT**

**VERSUS**

**MAINA KAMENYA.....RESPONDENT**

**R U L I N G**

This Appeal arises from what counsel for the Appellant refers to as Judgment/Ruling dated 19.01.2005 of **P.T. Nditika SRM Wanguru in Case No. 21/2002.**

I have perused the record of the subordinate court and I do not find any judgment or Ruling bearing that date. The only ruling of Mr. Nditika in that file is actually undated. This is indeed a fatal flaw that invalidates or nullifies the same. All Rulings/Judgments must be signed and dated by the Magistrate/Judge making the same. The so called Ruling/Judgment by Mr. Nditika is a nullity and calls for quashing or setting aside ex-debito justitiae. I therefore declare it a nullity and quash the same.

Although that is not one of the grounds of Appeal proffered by Counsel for the Appellant, I find it is a ground that carries or the other grounds. It is not therefore necessary to delve into issues of whether Mr. Nditika had jurisdiction to review the orders of his colleague dated 26.09.02 where he declined to adopt the award of the elders.

The Appeal herein therefore succeeds and the same is hereby allowed but only to the extent of prayer 1. In his Appeal however, the Appellant entreats this court to adopt the judgment dated 30.07.02 of the Mwea Land Disputes Tribunal. I have gone through the said award and this not being a magistrate's court, the provisions of Section 7(2) of the land Disputes Tribunal Act does not bind me. This court has inherent and unfettered jurisdiction to do justice even without being formerly moved to do so. I do therefore move myself suo motu and in the interest of justice quash the Award of the Tribunal dated 30.07.02. I do so because the said award is in contravention of Section 2 of the Land Disputes Tribunal Act No. 18 of 1990, which clearly defines "land" as ***"Agricultural land as defined in Section 2 of the Land Control Act..."***

It does not therefore relate to market plots. The property in dispute in this matter was an open market plot and is not agricultural land as defined under Section 2 of the Land Disputes Tribunal Act.

The Tribunal clearly lacked jurisdiction to handle that matter and the award was therefore made without jurisdiction. The same is therefore null and void and there is no point of retaining it on record or directing that it be adopted before the court is moved for orders of certiorari to quash it.

The said award is hereby quashed. The parties should file their claim before a court of competent

jurisdiction if they so wish.

**W. KARANJA  
JUDGE**

Delivered, dated and signed at Embu this 12<sup>th</sup> day of October 2010.

**In presence of:- Mr. Ombachi for Appellant. Non appearance for Respondent.**