



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

JUDICIAL REVIEW NO. 6 OF 2010

REPUBLIC.....PLAINTIFF

VERSUS

EMBU LAND DISPUTES TRIBUNAL & 4 OTHERS.....DEFENDANT

R U L I N G

This ex-parte Applicant has moved this court for orders of certiorari to remove into this court for the purpose of quashing the decision made by the Embu District Lands Disputes Tribunal on 16.4.09 and adopted as the judgment of the court on 16.9.09 awarding the interested party land parcel No. **GATURI/WERU/440** and adjournment costs of KShs.1,580.

He is also seeking for costs of the Application. He is relying on the verifying Affidavit and statement of particulars. The main ground relied upon is that the Tribunal interfered with the rights of a registered owner of land under the Registered Land Act and it had no jurisdiction to do so.

The exparte applicant has also annexed a copy of the extract of the register in respect of parcel No. GATURI/WERU/440 which was the subject of the said award. The register clearly shows that the land in question belongs to one DANIEL ANTHONY KINGORI KIIRU. The said Daniel Anthony Kingori was not a party of the proceeding before the tribunal yet adverse orders were made against him which practically divest him on the said absolute ownership.

I have studied the documents herein and the law application. The respondent has filled a long Replying Affidavit of 19 paragraphs. He claims that the land was transferred by fraudulent means and maintains that the same belongs to him. I have considered the contents of his Replying Affidavit along with the other documents herein.

Clearly, the award was made without jurisdiction. The land which was the subject matter of the tribunal proceedings is registered under the R.L.A. The Tribunal had no jurisdiction to entertain any claims pertaining to the ownership of the same. That jurisdiction is not envisaged under Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990.

I would also add that the tribunal has no power to deal with issues of fraud. Those 2 areas raise issues which are exclusively within the domain of conventional courts.

This is not to say that the interested party had no claim. He may have had a justiciable claim but he proceeded to the wrong forum. He should have filed his claim before a court of law which is vested with

jurisdiction to hear and determine such a claim.

The award of the tribunal was therefore made without jurisdiction. The same is null and void *ab initio*. I declare it so and order that the same be and is hereby removed onto this court and it is hereby quashed.

I nonetheless order that each party bears its own costs of the entire proceedings.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 22nd day of November 2010

In presence of:- Fatuma for Applicants, interested party present.