



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
MISC. CIVIL APPLICATION NO. 31 OF 2008

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF
CERTIORARI
AND
IN THE MATTER OF THE REGISTERED LAND ACT
(CAP 300 LAWS OF KENYA)
AND
IN MATTER OF LAND DISPUTES TRIBUNAL ACT (1999)
REPUBLIC**

VERSUS

MATHIOYA LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

JOHNSON MWANGI MUCHOKI.....INTERESTED PARTY

EXPARTE

MISHECK MUCHOKI KIRUMWA

R U L I N G

The exparte applicant herein one Misheck Mwangi died after leave to file a motion for orders of certiorari had already been granted by this court. A substitution was done after the interested party told the court that he had no objections to the same. One Stephen Mwangi Muchoki is therefore the Applicant herein. He has moved the court for an order of certiorari to remove into this court for quashing the award of the Mathioya Land Disputes Tribunal dated 5.2.08. The said Tribunal heard and determined a dispute that was filed by the interested party who was the son of the then exparte applicant. The parcels of land involved were **LOC.20/GITHURI/2026** and **LOC.20/GITHURI/2027**. Both parcels are registered in the names of the then ex-parte Applicant – Stephen Mwangi Muchoki – since deceased.

The Tribunal arbitrated and not only decided on the sub-division of the 2 properties but of other land parcels that belonged to the ex-parte Applicant.

Ultimately the Tribunal gave orders on the sub-division and distribution of the parcels in question. The ex-parte Applicant therefore moved the court for Judicial Review as the Tribunal had no jurisdiction to divest the ownership of the said parcels from him and change title to other persons.

Counsel for the ex-parte applicant filed submissions in support of the said motion. I have considered all the material placed before me which include a replying and further replying affidavit by the interested party herein. I have considered the applicable law – and more particularly the Land Disputes Tribunal Act No. 18 of 1990. The Land Disputes Tribunal draws its jurisdiction from Section 3(1) of the said Act. The provisions of the above section are very clear. The provision limits the jurisdiction of the Tribunal to

- (a) *The sub-division of, or determination of boundaries to land, including land held in common;*
- (b) *a claim to occupy or work land or*
- (c) *trespass to land.*

The Act does not therefore give the Tribunal power or jurisdiction to sub-divide land which is already registered and divest the registered owner of the proprietary rights accruing to him under Section 27 and 28 of the Registered Land Act. In purporting to determine ownership of registered land, the Tribunal acted without or in excess of jurisdiction. It therefore arrived at a decision that lacked the sanction of the law. Such a decision is a nullity in law. For this sole reason, I must find which I hereby do, that the Award of the Mathioya Land Disputes Tribunal is a nullity. I declare it such and order that the same is removed into this court and it is hereby quashed. The land in question will remain in the names of the late ex-parte Applicant. It should now be subjected to the usual process under the law of Succession Act as by law provided.

Each party will bear its own costs of this motion.

W. KARANJA

JUDGE

Delivered, dated and signed at Embu this 6th day of December 2010

In presence of:- Mr. Olewe for Ex-parte Applicant and Interested Party in person.