



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

MISCELLANEOUS CIVIL APPLICATION 12 OF 2008

**IN THE MATTER OF AN APPLICATION BY JACKTONE AYADO OKUMU FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW (CERTIORARI AND PROHIBITION**

AND

IN THE MATTER OF LAND DISPUTE TRIBUNAL ACT NO.18 OF 1990

AND

IN THE MATTER OF SUB WEST LAND DISPUTE TRIBUNAL

AND

IN THE MATTER OF PRINCIPAL MAGISTRATE'S COURT AT MIGORI

REPUBLICAPPLICANT

BETWEEN

MIGORI DISTRICT LAND DISPUTE (SUBA WEST DIVISION)

..... 1ST RESPONDENT

MIGORI PRINCIPAL MAGISTRATE'S COURT 2ND RESPONDENT

AND

JACTONE AYADO OKUMU APPLICANT

VERSUS

GABRIEL NYARONGE OKUMU INTERESTED PARTY/RESPONDENT

RULING

This Notice of Motion brought under **Order 53 rule 3(1)** of the **Civil Procedure Rules** and **Sections 8 and 9** of the **Law Reform Act Cap 26 Law of Kenya** was not defended. It was filed pursuant to leave granted on 16th April, 2008. The applicant sought an order of certiorari to remove into the High Court and quash the proceedings and the decision of the 1st Respondent dated 5th December, 2007 and lodged in court on 3rd April, 2008 in which the Respondent awarded the Interested Party a portion of the applicant's land parcel **NO.SUNA WEST/WASWETA II/1054**. An order of prohibition was also sought prohibiting the 2nd Respondent from hearing, deliberating or adopting the decision by the first Respondent.

The undisputed facts of the application are that the applicant is the registered owner of this parcel of land as evidenced by the annexed Title Deed.

The Interested Party lodged a claim against the applicant at the Migori District Land Dispute Tribunal (Suba West Division) (1st Respondent). He was claiming a share of the land. The dispute was heard and a verdict reached allocating the Interested an equal share in the land. The District Surveyor and the District Land Registrar were directed to visit the land to cause the sub-division and eventual sharing. That award has been filed at the Migori Principal Magistrate's Court

(2nd Respondent) for adoption as judgment of the court. Execution of the judgment will follow adoption.

This application was prosecution for the Applicant by **Mr. Kwanga**. The contention by the Applicant was that the 1st Respondent exceeded its jurisdiction donated by **section 3(1)** of the **Land Disputes Tribunal Act No.189 of 1990** when it ordered that the applicant loses half of his registered land to the Interested Party.

From the provisions of **section 3(1)** of the **Land Disputes Tribunal Act** the tribunal was only empowered by law to adjudicate on disputes relating to the division of or the determination of boundaries of land, including land held in common; a claim to occupy or work land; or trespass on land. The Tribunal herein did not have jurisdiction to hear and determine a dispute relating to the ownership of the land (**Beatrice M' Marete vs. Republic and others, Civil Appeal No.259 of 2000 at Nyeri**).

The Tribunal exceeded its mandate and the entire proceedings were as nullity. The application is hereby allowed with costs.

Dated at Kisii this 25th day of May, 2009.

A. O. MUCHELULE

JUDGE

25/5/2009

Before A. O. Muchelule – Judge

Mongare cc.

Mr. Odero for Mr. Kwanga for the Applicant.

Court: Ruling in open court.

A. O. MUCHELULE

JUDGE