



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**Miscellaneous Application 26 of 2009**

**JOSEPH MAGIGE MARWA-----APPLICANT**

**VERSUS**

**MASABA LAND DISPUTES TRIBUNAL**

**RESIDENT MAGISTRATE'S, KEHANCHA -----RESPONDENTS**

**DISTRICT LAND REGISTRAR, KURIA**

**RULING**

The applicant sought an order of certiorari to remove to this court and to quash the proceedings and award delivered on 20<sup>th</sup> June, 2007 by the Masaba Land Disputes Tribunal and the subsequent decree issued by the Resident Magistrate's Court at Kehancha on 26<sup>th</sup> July, 2007. The applicant is the registered proprietor of a parcel of land known as **BUGUMBE/ MASABA/ 231**. The title deed was issued to him on 30<sup>th</sup> September, 1974 pursuant to the provisions of Sections 27 and 28 of the Registered Land Act. It is a first registration. The land measures 2.8 hectares.

Land parcel number **BUGUMBE /MASABA /230** is registered in the name of Catherine Robi. Catherine filed Land Dispute Case No. 8 of 2006 before the Masaba Land Disputes Tribunal, hereafter referred to as "the Tribunal", alleging that the applicant acquired his aforesaid parcel of land fraudulently as it originally belonged to her late husband, Chacha Nyamesea.

The Tribunal heard both parties and their witnesses and concluded that though the applicant's title was a first registration, it was satisfied that the two parcels of land belonged to the late Chacha Nyamesea. The Tribunal further held that the applicant obtained the title to his land fraudulently.

Though not expressly stated, the effect of that decision was to nullify the applicant's title and award the land in dispute to Catherine Robi.

The jurisdiction of the Land Dispute Tribunal is defined by Section 3(1) of the Land Disputes Tribunals Act No.18 of 1990 which provides:

"3(1). Subject to this Act, all cases of a civil nature involving a dispute as to;

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

Shall be heard and determined by a Tribunal established under Section 4”.

It is therefore clear that the Tribunal exceeded its jurisdiction. It had no power to handle such a claim. In the circumstances, I allow the application and hereby quash the Tribunal’s decision as well as the orders made by the Resident Magistrate’s court, Kehancha, on 26<sup>th</sup> July, 2007 when the court adopted the decision by the Tribunal and entered judgment to that effect. The Tribunal shall bear the costs of this application.

Having made the aforesaid orders, I realize that Catherine Robi had not been made a party to these proceedings which were commenced in the High Court of Kenya at Nairobi but eventually transferred to this court. I think that was not proper. She ought to have been made a party so that she is able to make her representations one way or the other. That notwithstanding, I do not think she will be seriously prejudiced by this court’s orders because even if she had opposed the application, it is clear that the Tribunal exceeded its statutory powers as aforesaid.

**DATED, SIGNED AND DELIVERED at Kisii this 9<sup>th</sup> day of June, 2009**

**D.MUSINGA**

**JUDGE.**

**9.6.2009**

Before;D. Musinga.-J.

Mobisa-CC

No appearance for the applicant.

No appearance for the respondent.

**COURT:** Ruling delivered in open court on 9<sup>th</sup> June, 2009.

**D.MUSINGA.**

**JUDGE.**