

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

MISCELLANEOUS APPLICATION 36 OF 2008

REPUBLIC.....APPLICANT

VERSUS

THE MWEA LAND DISPUTES TRIBUNAL.....RESPONDENT

AND

SALOME WAMBERE.....INTERESTED PARTY

MICHAEL KITHAKA.....EX PARTE

RULING

The Ex-parte applicant has moved this court by way of Judicial Review seeking an order of certiorari to remove into this court for purposes of its being quashed the Award of Mwea Land Disputes Tribunal's Arbitration case No. 176 of 1993 ordering sub-division and transfer of parcels of land **No. MUTIRA/KANGAI/212 and MUTIRA/KANGAI/242** which was read on 24/6/2008 in Wang'uru R.M's Court Arbitration Case No. 2/1996.

I have considered very carefully the grounds on the face of the application, the statement of facts and the rival affidavits herein. I have also read through the proceedings and award of the Tribunal. I have also been informed by the provisions of the Land Disputes Tribunal Act and more particularly Section 3 thereof. Indeed the award at order No, 2 clearly states that the land should be sub-divided equally between the ex-parte applicant's 2 wives but emphasized that the Title Deeds would remain in the names of the ex-parte applicant. Had the award stopped at that, I would not have interfered with the same as that would amount to "**a claim to occupy or work land**" which is clearly provided for under Section 3 (1) (b) of the land Disputes Tribunal Act. I nonetheless note that somebody added No. 4 which is handwritten in ink and stated that the Title Deeds should bear the names **of "husband and Salome his wife"** This addition is not countersigned or initialed. It nonetheless changes the entire purport of the award and hurls it outside the jurisdiction of the Land Disputes Tribunal Act. The Tribunal lacks jurisdiction to order the alteration of a Title Deed or to order the cancellation of the same. Order No. 4 directs such a cancellation or alteration of the Title Deed. This therefore makes the entire award a nullity for lack of jurisdiction.

For this reason, the said award calls for quashing. The Notice of Motion dated 10/3/2009 therefore succeeds. The same is allowed and the said award is called into this court and the same is hereby quashed.

Each party will bear its own costs as they are members of the same family.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 27th day of July 2009.

In presence of:- M/s Njeru for ex-parte applicant and both parties.

W. KARANJA

JUDGE