



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**

**Miscellaneous Civil Application 9 of 2008**

REPUBLIC .....APPLICANT

VERSUS

CHAIRMAN, LUNGA LUNGA LAND DISPUTES TRIBUNAL .....1<sup>ST</sup> RESPONDENT

SENIOR RESIDENT MAGISTRATE, KWALE .....2<sup>ND</sup> RESPONDENT

AND

MWANAMKASI SHEE NGURUWE .....INTERESTED PARTY

DAVID KASIVU MAVEKE .....EX-PARTE

**R U L I N G**

Pursuant to the provisions of Order LIII rules 3 (1) of the Civil Procedure rules, David Kasivu Maveke, hereinafter referred to as the applicant took out the motion dated 3<sup>rd</sup> June 2008 in which he applied for the following orders:

- 1. That the judgment of the Kwale Senior Resident Magistrate in Kwale SRMCC Land Case No. 8 of 2008 and the decision of the Lunga Lunga Land Disputes Tribunal in Case No. 6 of 2006, Parcel No. KWALE/KIKONENI/BUMBANI 'B'/694 be reviewed to restore the registered owner of the parcel back to his property.***
- 2. That the Respondent be condemned to pay costs of this application.***

The aforesaid motion is accompanied by a statement of facts and verified by the affidavit of David Kasivu Maveke. The motion was served upon the Attorney General's representative who appeared for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The application was also served upon Mwanamkwasi Shee Nguruwe, the interested party herein. Neither the Respondents nor the Interested Party filed any replying affidavit nor grounds of opposition. When the motion came up for hearing, learned counsels appearing in the matter agreed with the approval of this court to file written submissions to dispose of the motion. In the end only the applicant and the Attorney General filed their submissions.

In the motions the applicant seeks for the tribunal's decision as adopted by the Senior Resident Magistrate's Court, Kwale to be quashed by an order of certiorari because the two bodies had no jurisdiction to make orders interfering with the applicant's title. It is the submission of the Respondents that the tribunal had no interest in the land in dispute and that it arrived at a decision which it believed was correct. In a nutshell the Attorney General was non-committal whether or not to support the tribunal's decision.

I have carefully considered the submissions filed by the applicant and the Respondents. I have also perused the Notice of Motion plus the statement of facts and the verifying affidavit. There is no dispute that David Kasivu Maveke, the applicant herein was registered as the proprietor of the parcel of land known as Kwale/Kikoneni/Bombani 'B'/694 and issued with the title deed on 3<sup>rd</sup> May 2002. In the year 2006, Mwanamkwasi Shee Nguruwe filed a claim over the aforesaid parcel of land before the Lunga

Lunga Land Dispute Tribunal. The dispute was heard and in its decision delivered on 6<sup>th</sup> March 2007 and adopted by the Senior Resident Magistrate's Court on 3<sup>rd</sup> April 2007, the land ownership was awarded to the Interested Party. The end result is that the tribunal decided to interfere with registered proprietary interest of the applicant. The tribunal had no jurisdiction to do that under Section 3(1) of the Land Disputes Tribunals Act. In the circumstances of this dispute, this court is entitled to interfere with such a decision by issuing an order of certiorari to quash the same.

For the above reasons, I find the motion dated 3<sup>rd</sup> June 2008 to be well founded. It is allowed as prayed with costs awarded to the applicant.

**Dated and delivered at Mombasa this 23<sup>rd</sup> day of July 2009.**

**J. K. SERGON**

**J U D G E**

In open Court in the presence of Mr. Ananda h/b Kanyi for the Applicant.

N/A for the Respondent and Interested Party.