



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA

Miscellaneous Civil Application 288 of 2007

**IN THE MATTER OF AN APPLICATION FOR THE JUDICIAL REVIEW ORDER
(CERTIORARI) BY WILSON SARAI WASAI TO REMOVE INTO THE HIGH
COURT AND QUASH THE AWARD OF THE NDISIVI DIVISION LAND DISPUTES
TRIBUNAL INVOLVING A LAND DISPUTE WITH JACKTON WANJALA WASAI
READ AND ADOPTED AS A JUDGMENT OF THE COURT IN WEBUYE SENIOR
RESIDENT MAGISTRATE’S COURT LAND CASE NO.16 OF 2007 ON THE 28TH
AUGUST 2007**

BETWEEN

REPUBLIC.....APPLICANT

AND

**THE NDISIVI DIVISION LAND DISPUTES TRIBUNAL
COMPRISING: HARRIET SIFUMA
MARGARET K. WANJALA**

TIMONA SOITA.....RESPONDENTS

JACKTON WANJALA WASAI.....INTERESTED PARTY

EX-PARTE: WILSON SARAI WASAI

RULING

This is a ruling on an application dated 13th December 2007 brought under Order LIII rule 3 of the Civil Procedure Rules and section 8 and 9 of the Law Reform Act. The Applicant is named as the **“Republic”** in the notice of motion while the supporting affidavit is sworn by one Wilson Sarai Wasai named as **“Ex-parte”** in the application. For all intents and purposes the pleadings show that Wilson Sarai is the ex-parte Applicant in these judicial review proceedings.

The application seeks for orders of certiorari to remove into this court and quash the award of the Ndivisi Land Disputes Tribunal as read and adopted by Senior Resident Magistrate, Webuye. Mr. Njoroge for the Applicant argued that the tribunal had no jurisdiction to hear a claim involving land registered under the Registered Land Act as was the suit premises land Parcel No. NDISIVI/NDIVISI/976. A copy of title is annexed to the application. The tribunal awarded 4.7 acres to the Interested Party to be excised from the Applicant’s land on the grounds that the two were brothers. The Applicant argues that the claim of the Interested Party was not supported by any evidence to justify the decision reached. Whether there was evidence to support the claim is not a concern of this court in an application of this nature.

The Respondent and the Interested Party were served with the application and the hearing notice. None of the two responded to the application or attended court during hearing.

The Interested Party claimed that the Applicant had taken his land given to him by their father 7.7 acres and registered the same in his name. The tribunal heard the matter and awarded the Interested Party 4.7 acres from the land registered in the name of the Applicant. The jurisdiction of the tribunal is provided for in section 3 (1) of the Land Disputes Tribunal Act as:

- “ 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.**

The claim before the tribunal involved registered land. The copy of the land certificate is annexed to the application as proof of registration. It is only the High Court and the Resident Magistrate Court which has jurisdiction to hear matters relating to registered land according to provisions of section 159 of the Land Registered Act, Cap.300. The Interested Party claimed part of the land and was indeed awarded part of it. That claim was not within the jurisdiction of the tribunal. The tribunal therefore acted in excess of its jurisdiction in hearing the said land dispute. The decision of the tribunal was adopted by the Senior Resident Magistrate, Webuye as judgment of the court. Such a judgment which is based on null and void proceedings would have no legal force.

I find that the application is merited and allow it in terms of prayer 1. The decision of Ndivisi Land Disputes Tribunal as adopted by Webuye Senior Resident Magistrate Court is hereby removed into this court and quashed accordingly. Each party to meet their own costs of these proceedings.

F. N. MUCHEMI

JUDGE

Dated, Delivered and Signed at Bungoma

This 12TH day of November 2009 in the absence of the parties in open court.