



SAMUEL NJIRU KANJI.....APPLICANT

VERSUS

WILSON MBOGO NJAGI.....1ST RESPONDENT

WILSON MBOGO NJAGI.....2ND RESPONDENT

MARGARET KARIGI MOSES.....3RD RESPONDENT

KALLEN MUTHONI NJIRU.....4TH RESPONDENT

PENINA WANGINDA.....5TH RESPONDENT

JUDGMENT

The amended Notice of Motion made under Order LIII Rule 3 CPC seeks Orders of Certiorari to quash the decision of Embu District Land Disputes Tribunal in case No. 3 of 2002. The decision was an award to the effect that land parcel No.Gaturi/Nembure/3988 registered in the name of the Exparte Applicant be subdivided and that the interested parties be given one acre out of the said land each. The application is accompanied by statement and verifying affidavit with annexures and the nature of the case. The verifying affidavit shows that in the ***Tribunal Case No. 3/2002*** the applicant was defendant and that the piece of land subject to the application is registered in his name on 23/12/1985. A copy of proceedings is exhibited. In the Tribunal the first interested party admitted that all parties were members of the same family and they had their lands but they wanted the land to remain in the hands of their mother as family land. It is also shown that the registration of Exparte Applicant received Land Board Consent under the Land Control Act Cap 302 with the knowledge of the interested parties who had attended the meeting of Land Board. From the above record it is clear the land in dispute was registered in the name of Penina Wanginda the last interested party, being a partition of parcel No.1951 as recorded in the green card. There is no evidence that she had inherited the land. The record shows that making award the elders decided to order a subdivision of the land into two portions. One acre out of total 8 acres and that one acre to be registered in the names of the five interested parties. It is to be noted if the said award was to be put into effect there would be interference with the registered title of the Exparte Applicant. There is no doubt that the Tribunal derives its jurisdiction from Land Disputes Act No. 18/1991 and Section 3 thereof sets down the limits of its jurisdiction dealing with land. The jurisdiction of High Court in Judicial Review it is to supervise and control the actions of the Tribunals and subordinate courts and other statutory authorities to ensure that such bodies keep within the special powers granted by statutes. In case a statutory body does exceed its jurisdiction the decision made without jurisdiction shall be quashed by

the High Court. In this case it is clear the Tribunal exceeded its jurisdiction and as the decision was a nullity the Judgment entered by **Senior Resident Magistrate J. Kiarie** on 7/8/2002 was also a nullity.

Upon considering the above I allow the application and grant orders as prayed. The interested parties shall meet the costs of the application.

Dated this 18th January, 2008.

J. N. KHAMINWA

JUDGE

18/1/2008

Khaminwa – Judge

Njue – Clerk

M/s Wairimu

Read in open court.

J. N. KHAMINWA

JUDGE