

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

Misc 118 of 2005

GITAU MUCHAMI.....APPLICANT

VERSUS

THE CHAIRMAN MARAGUA LAND DISPUTES TRIBUNAL.....RESPONDENT

EX PARTE

PAUL KAMANDE MUNGAI.....INTERESTED PARTY

JUDGMENT

Notice of Motion dated 16/11/2005 seeks Orders of Certiorari to quash the Maragua Division Land Dispute Tribunal award on the ground set out in the STATEMENT of facts and the Verifying Affidavit:-

1. that the Tribunal acted ultra vires contrary to Act No. 18 of 1990.
2. that the Tribunal had no jurisdiction to transfer the Exparte applicant land or any part thereof to the 3rd Respondent.
3. Tribunal acted in contravention of rules of natural justice in that the Applicant was never heard and that the proceedings before the Tribunal were a nullity ab initio.

I have perused the verifying affidavit. The proceedings before the Tribunal were commenced by the son of Ex parte Apploicant against one Paul Kamande. The suit property was the parcel No. Lo. 6/Kiugu/1200 registered in the name of Gitau Muchami Expart Applicant on 9/3/2004.

I have also perused proceedings of Maragua Land Disputes Tribunal Case No. 218/04. Although the Ex parte applicant was named as claimant he did not speak. The dispute was the removal of caution registered against the land by Paul Kamande Mungai. The Tribunal ended up ordering the Ex parte Applicant to subdivide a piece of his land and give it to Defendant Paul Kamande the cautioner. The award was sent to the Principal Magistrate at Murang'a in DDT Case No. 161 of 2005 and it was subsequently adopted as judgment of the court which can be executed by the 3rd Respondent resulting in the subdivision of the Applicants land.

I find that the Tribunal acted in excess of jurisdiction in making orders that are meant to enforce an alleged contract of sale of land which was registered in the name of the Ex parte applicant.

I allow the application and grant orders as prayed.

Costs to the Ex parte Applicant.

Dated 22 of March, 2007.

J. N. KHAMINWA

JUDGE