

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Misc Civil Case 53 of 2006

MARGARET WAKERA MURERIA.....
.....APPLICANT

VERSUS

LAND DISPUTES TRIBUNAL CENTRAL DIVISION.....
.....RESPONDENT

EUNICE WAKERA KAMBO.....INTERESTED
PARTY

JUDGMENT

Notice of Motion dated 2/6/2006 seeks to quash the decision of the Lands Disputes Tribunal for Central Division Kirinyaga dated 27/4/2006 on the ground that the Tribunal did not have jurisdiction to adjudicate upon matters of Registered Land under Cap. 300 and that the Tribunal made error of fact and law. The verifying affidavit shows that the Exparte applicant is the owner of parcel No. Inoi/Mbeti/337 absolutely free from incumbrances. The proceedings show that the ex-parte applicant was registered as proprietor upon succession proceedings. On hearing date only interested party appeared the Chairman of the Tribunal did not appear and was not represented. The interested party said she wanted to think about the matter but she had no money and was a disabled person. However she submitted that orders should not be granted. The court is of the view that judicial Review is against the exercise of Tribunals powers under the statute establishing the same therefore when the court is considering the matter although it has to consider the interests of Interested party, orders shall be granted if the Tribunal did not act within its powers. In this case the land in dispute was registered in the name of the Exparte Applicant as a gift from her mother. There is no dispute that the mother had a right to transfer the land to the Exparte Applicant. The Counsel for Applicant relies on the decision of the court of Appeal in the **Appeal No. 157/2001 Wepukhimbi and Another vs Francis W. Biket** where the court found that Tribunal did not have jurisdiction to interfere with Registered land and ownership thereof and therefore the award and the Resident Magistrate order adopting the same award as judgment were correctly quashed. Counsel has also referred to the Land Disputes Tribunal Act 18 of 1990 where section 3 (1) sets out the limits of the land Disputes Tribunal.

Disputes Tribunal.

I therefore find that the Tribunal acted without jurisdiction in requiring the court to order objector (Applicant) to give the claimant ½ acre out of Applicant' s registered land. This would have been an interference of a registered title.

I therefore allow the application and grant orders sought.

Dated this 13th March, 2007.

J. N. KHAMINWA

JUDGE

13/3/2007

Khaminwa – Judge

Njue - Clerk

Mr. Njagi present.

Ruling read in open court.

J. N. KHAMINWA

JUDGE