



**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**AND**

**FOR CERTIORARI**

**AND IN THE MATTER OF EASTERN PROVINCIAL LAND DISPUTES APPEAL NO. 78 OF 2005 AND MACHAKOS MISC. APPL. NO. 89 OF 2006**

**REPUBLIC.....APPLICANT**

**VERSUS**

**EASTERN PROVINCIAL LAND DISPUTES APPEAL COMMITTEE.....1<sup>ST</sup> RESPONDENT**

**PRINCIPAL MAGISTRATE'S COURT MACHAKOS.....2<sup>ND</sup> RESPONDENT**

**LYDIA WAIRIMU GITU.....3<sup>RD</sup> RESPONDENT**

**(EXPARTE) – KAMENE NDAWA & 2 OTHERS**

**RULING**

The Notice of Motion dated 18/10/2006 invokes Order 53 Civil Procedure Rules seeking Orders of Certiorari to quash the award and entire proceedings and the Judgment of the Resident Magistrate on the grounds that the Tribunal failed to hear the applicants before making the award thus violating the principles of nature justice. The record of Tribunal's proceedings is exhibited Lydia Wairimu Gitu was the Appellant. She gave her evidence on oath. She was cross-examined by Respondent one Judas Mbili Ndawa. Thereafter Judas Mbili Ndawa was sworn and gave his evidence and was examined and by the panel. It comes out clearly that Judas was speaking for his family. He does not appear in the proceedings as a party. This application was filed by:

1. Kamene Ndawa
2. Wathi Ndawa
3. Wambua Ndawa

The record does not indicate who was Judas Mbili Ndawa in these proceedings although he was referred to as Respondent.

The applicants stated above were not recorded as present or that they spoke although they were in Tribunal 97/2005 on 15/4/2005. when they cross-examined Lydia Wairimu at length. Kamene Ndawa gave her statement parties had opportunity to call witnesses. On the whole I find that at the hearing in first Tribunal all parties were given opportunity to speak and did speak before the Tribunal.

I also find that it is at the appeal stage that the applicants are not recorded. It has to be noted that at an appeal level the appellate body should move on the record of the first tribunal.

Nevertheless this Appeal Tribunal in its ruling stated that after “**hearing statements from both sides**” made award that District Surveyor Machakos to survey disputed part of the boundary and excise 2.6 hectares to appellant if that is shown to be correct by survey and any remainder shall go to Kamene the applicant. It is to be noted that there were documents to support the ownership of land namely search forms which shows the measurement of each land. It also appears that there are Title Deeds held. However even in disputes of boundary under registered land Act are dealt with by land registrars.

It is my finding that the award of the Tribunal was made within jurisdiction as given under Land Disputes Act 18/90. I also find that all parties were given adequate opportunity to be heard and that the Rules of natural justice were not breached.

I therefore dismiss the application with no order as to costs.

Dated this 15<sup>th</sup> May, 2007.

**J. N. KHAMINWA**

**JUDGE**

**15/5/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**Ms Ndorongo**

**Ruling read in court.**

**J. N. KHAMINWA**

**JUDGE**