



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

Misc 150 of 2006

JAPHET NTHIGA M’NYIRI.....APPLICANT

VERS US

THE SENIOR RESIDENT MAGISTRATE’S COURT (CHUKA).....1ST RESPONDENT

THE ATTORNEY GENERAL.....2ND RESPONDENT

M/S CIAMBUBA MUGAMBI.....3RD RESPONDENT

JUDGMENT

Notice of Motion dated 16/11/2006 was argued by the ex parte applicant in the absence of all Respondents. He said he had served and filed an affidavit for service. The application seeks orders of certiorari for quashing ruling delivered on 25/6/2006 by the first Respondent effectively entered judgment for 3rd Respondent M/s Ciambuba Mugambi. This was in respect of an award of Chuka District Land Tribunal in which the Tribunal dealt with registered Land **No. Karingani/Ndagani/451** which is registered in the name of M’Nyiri Kiarie the deceased father of the Exparte Applicant. The Tribunal ordered the land to be subdivided between 3rd Respondent and the said M’Nyiri Kiarie now deceased after a finding that the said 3rd Respondent is entitled to one acre of the land. The application also seeks order of prohibition against the 3rd Respondent from executing or acting on the said judgment. The grounds upon which the application is based on Statutory Statement as set out under paragraph 4 thereof. The registered proprietor died on 2/9/2004 was alive when the Tribunal made the award subdividing his land and given one acre thereof to the 3rd Respondent “**because she had purchased same**”. He filed an appeal in ***Embu Provincial Appeals Committee No.68 of 2003***. However the owner died on 2/9/2004 before the appeal was determined. Then the respondent applied to **Chuka Senior Resident Magistrate** enjoined the applicant in the proceedings in the District Land Disputes Tribunal without following procedure the first Respondent proceeded unlawfully to enter Judgment in favour of the 3rd Respondent thereby making illegal decisions the District Lands Tribunal award was void and of no legal basis and contrary to provisions of Act 18/90 which act limited the jurisdiction of the Tribunals jurisdiction in dealing with ownership of land. The first Respondent also proceeded to enter judgment before a decision against the award was pending because of the death of the appellant. There are other grounds set out touching on the issues of breaching the of natural justice.

I have perused the proceedings before the tribunal and before the Resident Magistrate. The first Respondent was well aware and was informed of a pending appeal. I find that it was for the Trial

Magistrate to adjourn the matter until the appeal was finalized on the substance of the dispute there are decisions from our highest court that the Tribunals do not have jurisdiction to interfere with registered title. The jurisdiction to deal with registered land is in High court or Resident Magistrate's Court. Furthermore the tribunals are not empowered to deal with disputes on contracts of sale.

I therefore find that since the dispute is relating land ownership and contract of sale. The Trial Magistrate acted in error. The judgment entered by the court is therefore invalid null and void. I allow the application and grant orders sought with costs to the Ex parte applicant.

It is so ordered.

Dated this 31st July, 2007.

J. N. KHAMINWA

JUDGE

31/7/2007

Khaminwa – Judge

Njue – Clerk

Japhet present

Nthiga M'Nyiri exparte applicant.

Ruling read in his presence in open court.

J. N. KHAMINWA

JUDGE