



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

Misc Case 139 of 2005

REPUBLIC.....  
.....PLAINTIFF

VERSUS

THE CHAIRMAN KIHARU DIVISION LAND DISPUTES  
TRIBUNAL.....DEFENDANT

JUDGMENT

Notice of Motion dated 19/9/2005 seeks orders of certiorari to quash the decision of the Kiharu Division Land Disputes Tribunal Case No.56/2005 and proceedings in Murang'a Senior Principal Magistrate's Court in L.D.T No. 82/05 in respect of **Plot No.Loc. 15/Mugeka/764**. The statutory statement of facts shows that the said piece of land is registered in the names of James Maina Gitau and Peterson Mwangi. This is shown in exhibit **JMG. 1** The second proprietor was a minor. The other ground is that the Tribunal has no jurisdiction to deal with ownership of land under the statute establishing the same Land Disputes Tribunal Act 18/199 section 3 (1) of which sets out the matters that the Tribunals may deal with.

The application is supported on oath by affidavit of Exparte Applicant with annexures attached. I have perused the judgment of the Tribunal the first paragraph reads **“The statements of the plaintiffs and defendant reveal that the case is between the sons and their father on sharing the land of the father”**

The tribunal has not authority to compel the father to share his land to his children during his time unless he does so willingly. As he has changed his mind the Tribunal cannot compel him to do so as the sons have no rights that can be enforced by a court of law.

I therefore find that the Tribunal made decisions outside the law and I find that the same are ultra vires.

I allow the application and grant orders sought.

No order as to costs.

Dated this 4<sup>th</sup> July, 2007.

**J. N. KHAMINWA**

JUDGE

**4/7/2007**

**Khaminwa – Judge**

**Njue – Clerk**

**M/s Mwaniki HB for Gacheru**

**James appearing in person.**

Ruling read in open court.

**J. N. KHAMINWA**

**JUDGE**