

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT EMBU

Misc Civ Appli 77 of 2005

REPUBLICAPPLICANT

VERSUS

1. NDIA LAND DISPUTE TRIBUNAL)

2. RESIDENT MAGISTRATE BARICHO)

3. JOSEPH MURIITHI KAMAU)

4. BANSON MWANGI KAMAU)

5. STEPHEN KINYUA KAMAU).....RESPONDENTS

EXPARTE

1. JOHNSON KAMAU NAFTALY.....INTERESTED PARTY

JUDGMENT

The Orders sought are in Judicial Review for the purpose of quashing award made by Ndia Land Disputes Tribunal and order to quash Baricho Resident Magistrate's Court decision made on 5th day of May 2005 adopting the award as decree.

The grounds are set out in the statement dated 20/6/2005 alleging that the Tribunal acted ultra vires their powers in view of Section 3 (1) of Act 18/1990 in respect of issues relating to succession of land of a deceased person. And that the Tribunal had no jurisdiction to deal with distribution of an estate of deceased which in jurisdiction is vested under the provisions of Act 160 Succession Act. And that in the result the order of Resident Magistrate was illegal.

I have read the copies of proceedings in the Tribunal. It is clear the land is still registered in the name of a deceased person see "JKN1 and "JKN11" being green card and death certificate of the proprietor. There is also exhibited a grant of representation of the registered proprietor issued to Johnson Kamau Naftali Kibure on 3/2/2005 who is the exparte applicant. The grant appears not to have been confirmed yet.

It is clear to me that the dispute before the Tribunal was in regard to the succession of that land **Mwema/Mukure/57** which dispute has to be handled under the Succession Act.

In the circumstances I allow Notice of Motion and grant orders sought with costs.

Dated this 11th May 2006.

J.K. KHAMINWA

JUDGE