



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

Civil Misc Appli 52 of 2005

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW

A N D

IN THE MATTER OF L.R.NO.MARAMA/BUCHENYA/197

A N D

**IN THE MATTER OF LURAMBI DIVISION LAND DISPUTES TRIBUNAL CASE NO. 2 OF
2004**

AND

**IN THE MATTER OF KAKAMEGA CHIEF MAGISTRATE'S COURT CIVIL MISC. AWARD
No.103 OF 2004.**

B E T W E E N

**REPUBLICAPPLICAN
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V E R S U S

**THE CHAIRMAN, LURAMBI LAND DISPUTE
TRUBUNAL.....RESPONDENT**

A N D

**ISAAC MACHEMBEINTERESTED
PARTY**

AND

**MARGARET CHENDEKA
MATANJIAPPLICANT**

RULING

The exparte applicant, Margaret Chendeka Matanji, applied on 8/8/2005 for an order of Certiorari to

remove into this court to be quashed the decision of the Lurambi Land Disputes Tribunal made in Tribunal case No.2 of 2004 and filed in Kakamega Chief Magistrate's court as CMCC Misc. Award No.103 of 2004 affecting land title Number Butsotso/Esumeiya/2650. The application shows that land parcel No.Butsotso/Esumeiya/2650 is registered in her name as the proprietor thereof under the Registered Land Act, Chapter 300 of the Laws of Kenya. It further shows that the Interested party, Isaac Machedembe, lodged a dispute in the Lurambi Divisional Land Disputes Tribunal. In the dispute, the interested party cited as the Respondent, not the exparte applicant, but instead, one Rashid Juma Wesonga. The exparte applicant was recorded as having failed to make representation in the dispute. Nevertheless the tribunal decided that ½ of an acre of the land comprised in the title No. Butsotso/Esumeiya/2650 would be excised and transferred to and amalgamated with land title No. Butsotso/Esumeiya/2649 ostensibly belonging to the interested party.

The interested party who was served with a hearing notice and a copy of the Notice of Motion dated 5-8-2005 as evidenced by the affidavit of service sworn on 30-3-2006 by Erick Swahili, a court process server, did not file a replying affidavit.

When the application came up for hearing on 30/5/06, Mr. Getanda, learned counsel for the exparte applicant, appeared and presented the application. The interested party also attended court in person. He was asked if he had been served with the application and he admitted that he had. He was asked also if he had filed a replying affidavit and he retorted that he had not. The application proceeded to hearing in his presence.

Mr. Getanda, learned Counsel for the exparte applicant, urged the court to issue the order sought and quash the decision of the Lurambi Land Disputes Tribunal because the Tribunal had acted without jurisdiction.

I have perused the application and duly considered the submissions made by Mr. Getanda. The powers vested in the tribunal under section 3(1) of Act 18 of 1990 do not include power to determine issues of or affecting title to land. The Tribunal clearly acted beyond the purview of its jurisdiction and its decision was clearly ultra vires its powers under section 3(1) of the Land Disputes Tribunals Act No.18 of 1990.

The exparte applicant was also not heard or given the right to be heard and the tribunal does not seem to have been aware that she was the proprietor of the land and not Rashid Juma Wesonga who acted as the objector in the proceedings before it (the tribunal). From the judicial review cases coming to this court it seems that the Lurambi Divisional Lands Disputes Tribunal, like many other Divisional Tribunals set up under section 4(1) of Act 18 of 1990, is unaware not only of the powers conferred by section 3(1) of the said Act, but also of the procedure it is required to follow while hearing land disputes and the manner it should constitute itself and sign the awards.

I am satisfied that the decision of the Tribunal was a nullity not least because it was ultra vires its powers under section 3(1) of Act 18 of 1990. An order of certiorari shall issue to bring into this court to be quashed the decision of Lurambi Divisions Land Disputes Tribunal as set out in prayer 1 of the Notice of Motion dated 5-8-2005. The interested party is condemned to pay the costs of the exparte applicant in these proceedings.

Dated, signed and delivered at Kakamega this 13th day of July, 2006.

G. B. M. KARIUKI

J U D G E