



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KAKAMEGA**

**Misc Appli 118 of 2003**

**IN THE MATTER OF THE LAW REFORM ACT AND CIVIL PROCEDURE ACT**

**AND ALL ENARLLING PROVISIONS OF THE LAW**

**AND**

**IN THE MATTER OF THE DECISION OF THE MATUNGU LAND DISPUTES TRIBUNAL  
UNNUMBERED IN RESPECT OF L.R.**

**NO. N. WANGA/NAMAMALI/1008 OR 1812**

**AND**

**IN THE MATTER OF KAKAMEGA CM CC. NO. 162 OF 2002 OR ANY OTHER RELEVANT  
MATTER BETWEEN PATRICK MAKOKHA SAKWA VERSUS ODUORI WAKANDA**

**AND**

**IN THE MATTER OF NOTICE TO THE DEPUTY REGISTRAR AND**

**APPLICATION FOR LEAVE VIDE KAKAMEGA HIGH COURT**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**VERSUS**

**THE CHAIRMAN MATUNGU  
L.D.T. ....RESPONDENT**

**AND**

**PATRICK MAKOKHA  
SAKWA .....APPLICANT**

**AND**

**RULING**

This is a Ruling on the Notice of Motion dated 15-3-04 which was brought under Order 53 of the Civil Procedure Rules seeking certiorari to bring into this court for quashing firstly the decision dated 22-4-2003 made by Matungu District Land Disputes Tribunal affecting land title No. N.Wanga/Namamali/1008 and secondly the proceedings and decision in Kakamega CMCC No. 162 of 2002. The Motion also sought Prohibition to prohibit the Chief Magistrate court, Kakamega and the Matungu District Land Disputes Tribunal from enforcing, executing or adjudicating any claim in respect of the said parcel of land.

I have perused the application and the statement and the verifying affidavit. When the Motion came up for hearing on 8-2-05,

Mr. Fwaya, the learned counsel for the Applicant, submitted that the Land Disputes Tribunal had no jurisdiction to make the decision it made. Moreover, he said, the order by the Tribunal compelling refund to the Interested Party by the Applicant of the purchase price was bad in law as the interested party had no locus standi to bring the claim on behalf of the estate of his deceased father because he had no Grant of Letters of Administration. The Applicant, he said, also had no capacity to be sued as he too had no Grant of Letters of Administration in respect of his father's estate. In any case, he submitted, the contract which was the subject of the dispute and claim in the Tribunal was made in 1987 and any action on it was time barred. The tribunal, he added, was not properly constituted as required by Section 4 of Act 18 of 1990 because it had four members instead of 3 or 5 as required by the said Act.

On her part, the learned counsel for the Interested Party,

Mrs. Muleshe, contended that as the proceedings before the Tribunal had been instituted by the Applicant, the latter could not turn round to plead lack of capacity on his part. She submitted that although there were 4 members, only three signed the award and therefore Section 4 of Act 18/1990 was not breached. It was

Mrs. Muleshe's contention that the Applicant could not plead lack of capacity while he was at the same time the registered proprietor of the land in question.

I have given due consideration to the submissions made by both counsel. The Matungu Land Disputes Tribunal in its decision dated 22.4.2003 usurped the power of the court in purporting to determine the rights of the parties to the contract of sale of land. The jurisdiction conferred on the Tribunal by Section 3(1) of Act 18 of 1990 (Land Disputes Tribunals Act) does not include determination of contractual rights in matters of sale of land. The Tribunal acted in excess of its jurisdiction.

Section 4 of the said act also required the Tribunal to be constituted by 3 or 5 members. In breach of this provision of the law, the Matungu Land Disputes Tribunal had four members. Although only three of them signed the decision that is the subject of these proceedings, the fourth member participated in the deliberations and proceedings and by dint of this fact he may have influenced the decision arrived at. It matters not therefore that only three of the four members signed the award. As the Tribunal was not properly constituted there was not therefore a valid decision made by a properly constituted Tribunal. I find it unnecessary to make findings on the capacity of the parties.

In these circumstances, the Notice of Motion dated 15-3-2004 succeeds. An order is hereby made in terms of prayer (a) of the said Motion. The Interested party shall bear the costs of these proceedings.

***Dated at Kakamega this 15<sup>th</sup> day of April, 2005.***

**G. B. M. KARIUKI**

**JUDGE**