

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISC. CIVIL APPLICATION NO. 117 OF 2002**

REPUBLIC:..... APPLICANT

Versus

THE PROVINCIAL LANDS DISPUTES

APPEALS COMMITTEE EMBU RESPONDENT

AND

SILOAH BRIGADE FOR CHRIST- INTERESTED PARTY

EXPARTE REGINA MUSENGYA GLEMBOCKI

RULING

The applicant herein Regina Musengya Glembocki was the Respondent in the appeal filed by the interested party before the Provincial Land Disputes Appeals Committee. Initially this matter was before the Land Disputes Tribunal Kitui where the applicant was the plaintiff. The Land Disputes Tribunal Kitui made the award in her favour which was challenged on appeal before the provincial Land Disputes Appeals Committee and the award was made to the interested party. The proceedings before both the Land Disputes Tribunal and the appeals tribunal were annexed in this application. The statement of facts, affidavit in support and notice to the registrar were filed as required by order 53 under which this application dated 19/11/02 was brought.

As per the statement of facts; the relief sought is that an order of certiorari do issue to bring forth and quash the proceedings, ruling and award of the Provincial Land Disputes Appeals Committee sitting at Embu in Appeal No. 7/98 dated May 2002 which accorded the land to the Respondent.

The application is brought on grounds that the appeal proceeded ex parte without the committee notifying the applicant to attend and argue her case before the appeals committee and that the applicant was, therefore, condemned unheard which was in breach of the rules of natural justice. This application has proceeded in absence of the Respondents and interested party. The court was satisfied that they were served with the Hearing Notice in terms of the Returns of Service filed and stamped by the Respondents and interested party's counsel who did not attend court.

Rule 5 (2) of Land Disputes Tribunal Rules provides that the Respondent has to be served with Notice to attend the appeal once a date is taken and Rule 11 further provides that such service shall be in accordance with the Civil Procedure Rules. It means that if service has been done then a return of service would be filed to that effect. In the replying affidavit dated 11/11/03 and sworn by Joshua Mukambu the chairman of the interested party it is deponed at Pars 7 and 8 that the applicant was served with summons three times but ignored them. There is no evidence that the applicant was ever served. If she had been served, evidence of service should have been annexed to this affidavit.

Judicial Review is normally concerned not with the merits of the decision reached by a tribunal but the process. The court will usually quash decisions where a party has not been accorded a fair hearing thus breaching of rules of natural justice. See **RIDGE versus BALDWIN 1964 AC 41** and the **COMMISSIONER OF LANDS versus KUNSTE HOTEL LTD Civil appeal 234/95**.

This court is satisfied that from the evidence on record, the applicant was not given a hearing which affected her legal rights to a hearing and I hereby do order that the decision of the Embu provincial Land

Disputes Appeals Committee case No. 7/98 dated May 2002 is brought forth and quashed by the authority of certiorari. Costs to the applicant.

Dated at Machakos this 24th day of November 2004

Read and delivered in the presence of

R.V. WENDOH

JUDGE