



REPUBLIC OF KENYA

**IN THE HIGH COURT OF KENYA
AT NAIROBI**

MISC. CIVIL APPLICATION NO. 310 OF 2000

REPUBLICAPPELLANT

-VERSUS

**JOSPHAT MBUGUA
KIUMU**

**CHAIRMAN, LARI
DIVISION**

LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

ONESMUS KARIUKI KAMAU.....2ND RESPONDENT

RULING

This is an application for Judicial Review to quash the proceedings of the Lari Division Land Dispute Tribunal together with the award read on 28/2/2000.

In the award the Tribunal ordered the object or the present applicant to transfer his piece of land Gatamayu/Nyandarua/1609 to his two wives at 1.9 acres for Charity Wanjiru Kamau and 1acre to Nancy Muthoni Kamau.

The grounds for the objection to the award was that the 1st wife was a stranger to the Tribunal Proceedings.

The parties before the Tribunal Proceedings were Onesmus Kamau & Others vs. Peter Kamau Wanjenga the objector and present applicant.

The claimant is the son of the 1st wife and although it is not shown who the other claimants were it is clear from the evidence of the claimant that he is claiming under his mother. In his statement the objector says that “it should be noted that my son cannot force me to sub-divide and transfer my piece of land to my two wives”.

It is important to note that the objector acknowledges that he has two wives to the extend that it is the son who is a party to the suit claiming under his mother, she cannot be said to be a stranger. The 2nd wife may be said to be a stranger to the proceedings but not the 1st wife because she was not a party to the proceedings in the Land Dispute Tribunal.

The other major ground of opposition is that the matter relates to the question of ownership of land and not merely putting up a boundary. This being a registered Land it appears that the Tribunal went outside the provisions of Sections 3 and section 169 of the Land Dispute Tribunal Act and the Registered Land Acts respectively. By dividing the land between the two wives, while the 2nd wife was not a party to the proceedings the Tribunal seems to have misguided itself as to its jurisdiction. Furthermore the Tribunal

has no right in law to divide the objectors land when he is still alive.

The 1st wife raised a valid point when she said that they had bought the land together with the objector. The objector accepts that she is still his wife as there was no mention of a divorce. The evidence of the children, which to some extent is supported by the objector who admitted that he had given some of the children of the 1st wife land to cultivate and build on.

These are legitimate issues but which may require determination by a court and not the Tribunal. It will be up to the 1st wife to contemplate what steps to take to establish her rights. For these reasons I find that the Tribunal acted outside its jurisdiction as mandated by the Registered Land Act section 169 and the Land Dispute Tribunal Act.

The application will allowed and the proceedings and the award of the Lari Dispute Tribunal read on 28/2/2000 and its attendant decree are quashed.

There will be no order as to the costs.

Delivered and dated this 17th day of July, 2000.

KASANGA MULWA
JUDGE