



REPUBLIC OF KENYA

IN THE HIGH COURT

AT BUNGOMA

Miscellaneous Civil Application 184 of 2010

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO.18 OF 1990

AND

IN THE MATTER OF REGISTERED LAND ACT, CAP 300 LAWS OF KENYA

AND

IN THE MATTER OF THE LAW OF SUCCESSION ACT CAP 160 LAWS OF KENYA

**AND IN THE MATTER OF THE NDISIVI DIVISIONAL LAND DISPUTES TRIBUNAL CASE
NO.12 OF 2010**

AND

**IN THE MATTER OF AN APPLICATION BY CLEOPHAS MUMALASI WABUSELA FOR
JUDICIAL REVIEW BY WAY OF AN ORDER OF CERTIORARI TO REMOVE INTO THIS
HONOURABLE COURT AND QUASH THE FINDING AND AWARD OF THE NDISIVI LAND
DISPUTES TRIBUNAL IN TRIBUNAL CASE NO. 12 OF 2010 ADOPTED AS JUDGMENT IN
WEBUYE SENIOR RESIDENT MAGISTRATE'S COURT LAND DISPUTES TRIBUNAL CASE
NO.25 OF 2010 ON 20TH AUGUST 2010**

AND

IN THE MATTER BETWEEN

REPUBLIC.....APPLICANT

~VRS~

**1. NDISIVI LAND DISPUTES TRIBUNAL COMPRISING
OF:**

JAMES SILINGI NDALILA

ALEXANDER L. MUTALI

NELSON SIKANGA

TIMONA SOITA

TIMONA S. SIVELANGE1ST RESPONDENT

2. THE SENIOR RESIDENT MAGISTRATE WEBUYE..... 2ND RESPONDENT

3. PROTUS BARASA LUPAO..... INTERESTED PARTY

EX-PARTE

CLEOPHAS MUMALASI WABUSELA

JUDGMENT

Land parcel no.Ndivisi/Mihuu/1291 is registered in the name of the *ex-parte* Applicant. It measures 6 acres. The Interested Party went to Ndivisi Land Disputes Tribunal (1st Respondent) to complain that this was their father's land which the *ex-parte* Applicant had fraudulently registered in his name and thereby disinherited the rest of the family. He was making a claim on his behalf and on behalf of his other brothers. The *ex-parte* Applicant is their eldest brother. His case was that he brought the suit land which he registered in his name while their father LupaoMumalasiWalusela was alive. He only allowed his brothers to stay on the land and cultivate it. He stated that their father's land was Ndivisi/Mihuu/1290. The 1st Respondent heard the dispute and allowed the *ex-parte* Applicant's claim and distributed both 1290 and 1291 to the sons of the deceased. The *ex-parte* Applicant was given 3 acres of the suit land while the rest went to the brothers. The award was forwarded to the 2nd Respondent who adopted it as the judgment of the court.

The *ex-parte* Applicant was aggrieved and, following leave, brought this motion seeking an order of Judicial Review in the nature of *Certiorari* to remove into this court and quash the award and the judgment on the basis that under section 3 (1) of the Land Disputes Act no.18 of 1990 the 1st Respondent had no jurisdiction to hear and determined the dispute. He was represented by Mr. Onyando. The Respondents did not defend the motion. The Interested Party defended the motion. He reiterated that the suit land belonged to their father but that the *ex-parte* Applicant had fraudulently got registration. He asked that the court should not invoke legal technicalities to deny him and his brothers their entitlement to the suit land.

The Interested Party and the other sons of the deceased are at liberty to file a suit in the High court to claim the suit land from the *ex-parte* Applicant if their case is that the registration was a fraud. The 1st Respondent's powers under section 3 (1) of the Act did not include the determination of a claim over registered land whose effect was to order the distribution of such land. Where a Tribunal takes upon itself to exercise a jurisdiction which it does not possess, its decision is a nullity (**Muhia v. Mutura [1999] IEA 209**).The award that was sent to the 2nd Respondent for adoption was a nullity.

It is for these reasons that I allow the application. I remove into court the award and judgment and/or decree and quash them by order of *Certiorari*. Since the parties are brothers, I ask that each should bear his own costs.

Dated, signed and delivered at Bungoma this 11th day of July 2012.

A.O. MUCHELULE
JUDGE