



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Judicial Review 18 of 2011

REPUBLIC APPLICANT

VERSUS

**KIRINYAGA CENTRAL DIVISION LAND DISPUTES TRIBUNAL.....1ST
RESPONDENT**

**PRINCIPAL MAGISTRATE KERUGOYA2ND
RESPONDENT**

KARIMI KABUTHI3RD RESPONDENT

EX PARTE

MWAI KABUTHI

RULING

This is the Notice of Motion dated 13/4/2011. It's brought under Order 53 rule 3(1) Civil Procedure Rules and 58 & 9 Law Reform Act, for an Order of Certiorari to remove into the High Court and quash the award of Kirinyaga Central Division Land Dispute Tribunal and Order of the Principal Magistrate Kerugoya adopting the award as Judgment of the Court.

The main ground is that the Applicant acted outside it's jurisdiction. The Applicant annexed a copy of the proceedings of the Land Disputes Tribunal. From the proceedings it's clear that the Exparte Applicant and the 3rd Respondent are real brothers, the former being the eldest. His claim was a beneficial interest and not just a claim to occupy and work land. If it was only an issue of occupying and working land the Tribunal would not have directed the Executive Officer to sign the relevant documents if the Applicant herein failed to do so. The Tribunal also directed the land Registrar to dispense with the old title If it was required. It even uplifted any restrictions and cautions registered. These clearly indicates that the Tribunal had established the beneficial interest of the 3rd Respondent and was cancelling the old title and issuing 2 new titles. Was it within their powers to do so? The Attorney General appearing for the 1st and 2nd Respondents conceded to the application. He says the Tribunal interfered with title by ordering for its subdivision, and had no jurisdiction to do so. He asked the Court to allow the application dated 13/4/2011 with each party bearing his/her own costs.

M/s Wangechi Munene for the 3rd Respondent submitted that the application dated 13/4/2011 must

fail because it was fundamentally defective, as the application seeking Leave was filed in the name of the Republic as opposed to the name of the Exparte Applicant. She also submitted that the Applicant did not file the Notice of Motion within 21 days of the granting of Leave.

The record shows that Leave was granted on 28/3/2011 and the Notice of Motion was filed on 13/4/2011. This with due respect to Counsel is within the 21 days provided for under Order 53 rule 3(1) Civil Procedure Rules.

Secondly the naming of the Exparte Applicant as the Republic is a mere technicality, which does not go to the root of the cause of action. It did not also prejudice the 3rd Respondent. The 3rd Respondent knew clearly who the Exparte Applicant was. The Constitution under Article 21 (3) (d) provides that the Court while observing rules of natural justice shall not be unreasonably restricted by procedural technicalities.

An unlawful act will not be validated by a technical omission.

From the foregoing it is clear that the 1st Respondent went beyond its jurisdiction as envisaged in section 3(1) of the now repealed Land Disputes Tribunal's Act. The decision made by the 1st Respondent can not therefore be allowed to stand.

I remove into the High court the decision of the 1st Respondent and the Order of the 2nd Respondent vide Tribunal case No.21/2010 and quash them. Any consequential Orders arising therefrom are also set aside. Each party to bear his/her own costs.

DATED AND DELIVERED AT EMBU THIS 10TH DAY OF OCTOBER 2012.

H.I. ONG'UDI

J U D G E

In the presence of;

Mr. Munene for Applicant

M/s Munene for 3rd Respondent

Njue – C/c