

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT MALINDI

Miscellaneous Application 81 of 2008

REPUBLIC OF KENYA.....APPLICANT

VERSUS

THE CHAIRMAN, GICHUGU LAND DISPUTE TRIBUNAL.....RESPONDENT

SARAH MUTHONI KIMARU.....INTERESTED PARTY

JULIUS MUCHIRA KIMARU.....EX-PARTE APPLICANT

RULING

The Ex-parte applicant herein who appeared in person filed the notice of motion dated 16/7/2007 pursuant to leave granted by the court earlier on. He is seeking an order that the court be pleased to remove into this court and quash the decision/award of Gichugu Land Disputes Tribunal made on 28/3/2006 and the subsequent decision of the Senior Resident Magistrate Kerugoya made on 12/7/2006 vide *Tribunal Case No. 40/2006*. His grounds are basically that the land in question i.e **NGARIAMA/KABARE/555** is registered in his names and the Tribunal lacked jurisdiction to interfere with it. He also contends that rules of natural justice were breached. He has annexed the Title Deed in question as **JMK 1A** which shows that the land parcel in question was registered in his name in 1982. The certificate of search **JMK1B** shows clearly that he is an absolute owner and further that there are no encumbrances to his Title. The interested party had filed a complaint before the Gichugu Land Disputes Tribunal seeking to be given 1 acre out of the parcel in question. The Tribunal found in her favour and awarded her the 1 acre she had requested for. This therefore meant that the Ex-parte applicants Title Deed to the land would be cancelled and 2 others issued to reflect the change in question.

Mr Ngigi Gichoya who appeared for the interested party filed grounds of opposition to the application. He later withdrew the same with the leave of the court and he was granted leave to file a replying affidavit. I have just noticed that he never filed the said replying affidavit. He did not appear on the hearing date either although he was aware of the hearing date. His mind may have registered the futility of his opposition and he therefore decided to stay away. Be that as it may, I have considered the notice of motion before me. I have perused the annexures and I am satisfied that the ex-parte applicant is the absolute owner of the plot in question. His Title to the same is indefeasible. The same cannot be interfered with in anyway by the Land Disputes Tribunal. Cancellation of Title Deeds or any dealings in registered land is the preserve of the Registered Land Act Cap 300 of the Laws of Kenya. The Tribunal did not have jurisdiction to interfere with the Ex-parte applicants proprietary rights. The Land Disputes Tribunal Act and more particularly Section 3 does not give the Tribunal such powers. Their award was therefore ultra vires and consequently a nullity ab initio. The ex-parte applicant's motion must therefore carry the day. The same is hereby allowed. The award of the Gichugu Land Disputes Tribunal is removed into this court and it is hereby quashed. Each party will bear its own costs as both parties are family members.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 1st day of July 2009.

In presence of: Both parties.

W. KARANJA

JUDGE

1/7/2009