



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Judicial Review 26 of 2009

REPUBLIC.....APPLICANT

VERSUS

THE EMBU LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE SENIOR PRINCIPAL MAGISTRATE COURT AT EMBU.....2ND RESPONDENT

MARION KAARI MBUI.....INTERESTED PARTY

RULING

The ex-parte Applicant has moved this court pursuant to Section 8 and 9 of the Law Reform Act and Order LIII of the Civil Procedure Rules seeking the following order.

“ That this honourable court be pleased to issue an order for certiorari to remove into this court and quash the proceedings made by the Land Disputes Tribunal at Embu in EBU/LTD/168/3/2002 and to quash all subsequent orders pursuant thereto issued by the Senior Principal Magistrate Court Embu in Award Case No. 3 of 2002 under the provisions of the Land Disputes Tribunal Act No. 18 of 1990.”

He also asks for costs. The application is premised on the single ground that the Tribunal lacked jurisdiction to determine the matter which involved Title to land. Both parties filed skeletal submissions in the matter. Counsel for the ex-parte applicant buttressed his submissions with several authorities which are nonetheless only persuasive. Indeed, I do not need to say much in this ruling. Reason being that the law on this subject is now settled and there is actually no room for the court to find otherwise. It is trite law that the Land Disputes Tribunal Act does not confer on the Tribunal jurisdiction to arbitrate over matters of ownership of Title. The jurisdiction of the Tribunal is clearly set out in Section 3 (1) of

the Land Disputes Tribunal Act as follows:- It has powers to hear and determine:-

- (a) ***The division of, or the determination of boundaries to land, including land held in common.***
- (b) ***A claim to occupy or work land***
- (c) ***Trespass to land.***

The above does not include power to order revocation, cancellation, rectification or even issuance of Title deeds. In this case, the Tribunal “***ordered the District Surveyor and the District Land Registrar to sub-divide parcel NO. NGANDORI/KIRIERI/453 into the equal parts to be registered in the name of the plaintiff –Miss Marion Kaari Mbui and the other half to be registered in the name of the defendant Elisha Mbogo....***”

This order was clearly made in excess of jurisdiction and it ultra vires, null and void. The jurisdiction to cancel or interfere with Title Deeds in anyway is vested on the Registered Land Act more particularly Section 143 of the same. The Land Disputes Tribunal Act does not bestow such power to the Tribunal. The award in this matter was therefore null void and has no force of law. The same deserves to be quashed. The motion before me therefore succeeds. I therefore call for the decision of the Land Disputes Tribunal dated 26/2/2002 and the decision of the Senior Principal Magistrate Embu dated 19/9/2006 adopting the same to be removed into this court for quashing and the same are hereby quashed along with all subsequent orders arising therefrom.

I nonetheless note that the parties herein are siblings and I order that each party bears its own costs of this case.

W. KARANJA

JUDGE

Delivered, signed and dated at Embu this 3rd day of Nov.2009.

In presence of:- Mr. Ithiga for counsel for ex-parte applicant and interested party in person.