



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
OF KISII
Miscellaneous Civil Application 52 of 2008

**IN THE MATTER OF APPLICATION BY MWITA CHACHA MASWI TO APPLY FOR JUDICIAL REVIEW
(CERTIORARI AND PROHIBITION)**

AND

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

AND

IN THE MATTER OF LAND DISPUTES TRIBUNAL COMMITTEE (MASABA DIVISION) KURIA

AND

IN THE MATTER OF THE RESIDENT MAGISTRATE'S COURT AT KEHANCHA

AND

**IN THE MATTER OF KEHANCHA RESIDENT MAGISTRATE'S LAND DISPUTE'S TRIBUNAL CASE NO. 23 OF
2008**

AND

**IN THE MATTER OF LAND DISPUTES TRIBUNAL COMMITTEE MASABA DIVISION BUGUBE/MASABA/205 OF
29/04/05 CASE NO. 12**

BETWEEN

REPUBLIC APPLICANT

VERSUS

LAND DISPUTES TRIBUNAL COMMITTEE

(MASABA DIVISION) KURIA 1ST RESPONDENT

THE RESIDENT MAGISTRATE'S COURT

AT KEHANCHA 2ND RESPONDENT

AND

NCHAGWA MWITA BURURE INTERESTED PARTY

EX- PARTE

MWITA CHACHA MASWI

RULING

The ex parte applicant sought an order of certiorari to remove into this court for purpose of quashing the proceedings and decision of the 1st respondent in its Land Dispute case No. 12 of 2008 and adoption proceedings thereof by the second respondent.

He also sought an order of prohibition to prohibit the 1st respondent from hearing or dealing with the issue of ownership of land parcel **No. BUGUMBE/MABERA/205**, hereinafter referred to as "**the suit land**", and a further order to prohibit the second respondent from enforcing the 1st respondent's decision relating to the suit land.

The applicant is the registered proprietor of the suit land. He was registered as the proprietor thereof on 30th September, 1974 and on 22nd May, 1978 he was issued with a title deed. That notwithstanding, in 2008 the interested

party filed a case before the 1st respondent claiming that he was the owner of the suit land.

The 1st respondent heard the case and in its award delivered on 11th April, 2008 ordered that three quarters of the suit land be transferred to the interested party.

The 1st respondent forwarded its decision to the 2nd respondent for adoption which was done on 9th October, 2008.

The applicant contended that the 1st respondent acted outside its jurisdiction by ordering change of ownership of a parcel of land that was registered. That is true. The 1st respondent's jurisdiction is limited by the provisions of **section 3 (1) of the Land Disputes Tribunals Act**. Such a tribunal cannot purport to nullify a title deed. If the interested party verily believed that he had a valid claim over the suit land, he ought to have filed his case before the High Court.

The respondents and the interested party were served with this application but none of them contested the same.

The orders sought are merited and I grant the same. The 1st respondent and the interested party shall bear the costs of this application.

DATED, SIGNED AND DELIVERED AT KISII THIS 16TH DAY OF DECEMBER, 2009.

D. MUSINGA

JUDGE.

16/12/2009

Before D. Musinga, J.

Mobisa – cc

N/A for the applicant

N/A for the respondent

Court: Ruling delivered in open court on 16th December, 2009.

D. MUSINGA

JUDGE.



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