



Republic v Provincial Land Disputes Appeals Committee; Mutai (Exparte Applicant); Barngetuny (Interested Party) (Judicial Review Application 1 of 2017) [2023] KEELC 16146 (KLR) (16 March 2023) (Judgment)

Neutral citation: [2023] KEELC 16146 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
JUDICIAL REVIEW APPLICATION 1 OF 2017**

**JM ONYANGO, J
MARCH 16, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

PROVINCIAL LAND DISPUTES APPEALS COMMITTEE RESPONDENT

AND

SAMSON MUTAI EXPARTE APPLICANT

AND

JEPKUTO BARNGETUNY INTERESTED PARTY

JUDGMENT

1. The Applicant applied for Judicial Review by way of Notice of Motion dated June 10, 2011 seeking the following orders:
 1. That an order of certiorari be and is hereby issued to bring into the High Court and quash the decision made by the 1st Respondent on May 6, 2011 in Nakuru Provincial Land Dispute Appeals Committee Appeal No 50 of 2008.
 2. The costs of this application (sic).
2. The application is based on the grounds set out on the face of the Notice of Motion and the Verifying Affidavit of Samson Mutai, the *Ex- parte* Applicant herin, sworn on the May 25, 2011 in which he depones that he purchased a piece of land measuring 4.7 acres from the Interested party but the Interested party refused to transfer the same to him. The dispute was referred to the Kapsabet Land Disputes Tribunal which made an award in his favour on August 12, 2008. The said award was adopted



by the court on June 11, 2009. The interested party being dissatisfied with the decision of the tribunal applied to the High Court to have it quashed. The court struck out the application as it had been filed out of time.

3. He further deponed that upon the interested party's application being struck out, he instituted a substantive suit at Kapsabet Court vide Kapsabet PMCC No 100 of 2010 seeking recovery of the land but the same was dismissed for being an abuse of the court process. The interested party did not appeal against the said ruling but instead filed an appeal at the Nakuru Provincial Land Disputes Appeals Committee which ruled against him prompting him to institute these proceedings.
4. Upon being served with the application the Interested party filed a Replying affidavit sworn on the July 20, 2011 in which she contended inter alia that the Ex-parte applicant having participated in the appeal proceedings is estopped from denying its jurisdiction as the same amounts to an abuse of the court process. She further deponed that the Kapsabet Resident Magistrate did not have the jurisdiction to adopt the decision of the Kapsabet Land Disputes Tribunal as the Tribunal's decision was unlawful.
5. The Respondent through the Attorney General indicated that they would not oppose the application. The application was disposed of by way of written submissions but only the Ex-parte Applicant filed his submissions which I have considered.
6. The only issue for determination is whether the Nakuru Provincial Land Disputes Appeals Committee, the Respondent herein had the jurisdiction to hear and determine an appeal over a dispute relating to title over registered land.

Section 3 (1) of the [Land Disputes Tribunal Act No 18 of 1990](#) (repealed) provides as follows:

“Subject to this Act, all disputes of a civil nature involving a dispute as to:

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

Shall be heard and determined by a Tribunal established under section 4”.

7. The Act provides that appeals from the Land Disputes Tribunal should be lodged in the Provincial Land Disputes Appeals Committee which hears and determines appeals from decisions made by the Land Disputes Tribunals. Such appeals must also fall within the jurisdiction prescribed under the provisions of the Act.
8. The courts have in various cases held that the Land Disputes Tribunals and their appellate arm, the Provincial Land Disputes Appeals Committee did not have jurisdiction to hear and determine disputes over title to land.
9. In the case of [Republic v Chairman Lurambi Land Disputes Tribunal & 2 Others](#) (2006) eKLR the Court held as follows:

“The powers vested in the tribunals under Section 3(1) of the Land Disputes Tribunal Act No 18 of 1990 do not include the power to determine issues of or affecting title to land”



Similarly, in the case of Mateo Githua Ngurukie v Hon Attorney General & 5 Others Nyeri HC Civil Suit No 206 of 1990 Ombwayo J held stated thus:

“Over and again the Court of Appeal and High Court have held that the Land Disputes Tribunal lacks jurisdiction over registered land especially where the matter at hand touches title to land”

10. In the instant case, the dispute related to land parcel No Nandi /Baraton/382 which was registered under the *Registered Land Act* Cap 300 (now repealed). The applicable law at the time the dispute was adjudicated by the Tribunal was Section 159 of the *Registered Land Act* Cap 300 (repealed) which provided the jurisdiction to adjudicate upon and settle complaints relating to registered land.

The said section provides as follows:

Section 159. “ Civil suits and proceedings relating to title to or possession of land or to the title to a lease or charge, registered under this Act or to any interest in land lease or charge being an interest which is registered or registrable under this Act shall be tried by the High Court and where the value of the subject matter in dispute does not exceed twenty thousand pounds, by the Resident magistrate’s Court or where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunal Act in accordance with that Act”

11. It is therefore clear that the Respondent had no jurisdiction to entertain the appeal by the Interested Party. Consequently, it follows that the decision made by Land Disputes Appeals Committee which had no jurisdiction to entertain the dispute before it, must of necessity be null and void.

As was held in the case of *Macfoy v United Africa Co Ltd* (1961) 3 All ER 1162;

“if an act is void, then it is in law a nullity. It is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

12. The upshot is that the application has merit and I grant it and make the following final orders:
- a. An order of certiorari is hereby issued quashing the decision made by the Respondent on May 6, 2011 in Nakuru Provincial Land Dispute Appeals Committee Appeal No 50 of 2008.
 - b. The costs of this application shall be borne by the Interested Party.

DATED SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 16TH DAY OF MARCH 2023.

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J.M ONYANGO

JUDGE

In the presence of;

1. Mr. Ogongo for the Ex-parte Applicant
2. No appearance for the Respondents and Interested Party



Court Assistant: Mr. Oniala

