



Republic v Gachoka District Land Disputes Tribunal & another; Ngari (Exparte Applicant); Ngari (Interested Party) (Environment and Land Judicial Review Miscellaneous Application 09 of 2013) [2023] KEELC 22585 (KLR) (23 May 2023) (Judgment)

Neutral citation: [2023] KEELC 22585 (KLR)

FORMELY KERUGOYA MISC JR NO. 40 OF 2013

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND JUDICIAL REVIEW
MISCELLANEOUS APPLICATION 09 OF 2013**

A KANIARU, J

MAY 23, 2023

BETWEEN

REPUBLIC APPLICANT

AND

GACHOKA DISTRICT LAND DISPUTES TRIBUNAL 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

AND

PETER M NGARI EXPARTE APPLICANT

AND

DAVID NGARI INTERESTED PARTY

JUDGMENT

1. The dispute herein relate to land parcels No. Mbeere/Kiambere/1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612 and 1613 all of which were the subject of a decision made on 31/7/2013 in ministers Land Appeal Nos. 267 of 2001. The land parcels are shown to have been in Kiambere Adjudication Section. The dispute then was between David Ngari and Peter M. Ngari, both of whom were representing some other parties. In the dispute, David Ngari was the appellant while Peter M. Ngari was the respondent. The appellant won the appeal and that is what triggered this Judicial review matter now before court. In this matter Peter M. Ngari is the exparte applicant while David Ngari is the interested party. Gachoka District Land Disputes Tribunal and the Hon. Attorney General are the 1st and 2nd respondents.



2. The matter before the court was brought vide a Notice of Motion dated 14/2/2014 and filed on 19/2/2024. The Notice of motion is expressed to be brought under order 53 Rule 3 (1) of [Civil Procedure Rules](#), Sections 8 and 9 the [Law Reform Act](#), and all other enabling Law. The prayers sought are as follows:
 1. That an order of *certiorari* to remove into the High Court for purpose of quashing the decision of the Land Dispute Tribunal, Gachoka Mbeere South District Appeal case no. 26 of 2001 dated 31/7/2013 awarding the Land parcels nos. Mbeere/Kiambere/1605-1613 to the interested party herein.
 2. That the costs of the application be provided for.
3. According to the ex parte applicant, the contested proceedings were filed almost ten (10) years after the 60 days period stipulated by the law and it was therefore time barred. The proceedings also were said to have been conducted under a repealed Law, which again made them illegal. The body that conducted the proceedings was said to have been unlawfully constituted. It acted illegally and its decision therefore was “null and void in Law and therefore unenforceable”.
4. The 1st and 2nd respondents replied to the matter via grounds of opposition filed on 14/3/2022 and dated 10/3/2022. According to the respondents, the application before court does not sufficiently clarify the nature of misconduct in the actions of the respondents in exercise of their statutory duties. It was averred that Judicial Review deals with procedure, not results. Further, the orders sought are said to be discretionary and can be denied even if warranted. The application was said to be misconceived and a non- starter.
5. I don't see any response from the interested party.
6. The matter was canvassed through written submission. The ex parte applicant's submissions were filed on 3/10/2022. Generally, the submissions reiterate what the supporting affidavit that came with its application contains. More specifically, it was emphasized that the proceedings conducted were illegal and that they were filed way beyond the time stipulated by Law.
7. The respondents' submissions were filed on 16/6/2022. The respondents emphasized that judicial review is not about the merits of a decision but rather about the process followed in reaching the decision. The respondents sought to drive this point home by citing and even quoting case Law. In this regard, the cases of *Republic v Kenya National Examination Council, Ex parte Gathenji And Rabab Wanjiru Njuguna v Inspector General Of Police & another* [2013] eKLR were cited and quoted.
8. It was also submitted that the applicant failed to clarify properly the nature of misconduct attributed to the respondents.

In this regard, Section 107 of the [Evidence Act](#) (Cap 80) was relied on and the case of [Jennifer Nyambura Kamau v Humphrey Mbaka Nandi](#) [2013] eKLR was cited. The court was ultimately asked to dismiss the application.
9. The interested party did not file submissions and I pointed out earlier that he had not responded to the matter.
10. I have considered the application as filed, the response by the respondents and the rival submissions on record.

For starters, it is not clear to me how a matter conducted under the [Land Disputes Tribunals Act](#) could be handled by a government administrator. Under that Act, there were gazetted elders who would sit and handle a dispute. Their decision would then be sent to court for adoption as judgment of the court.



The only role that an administrator played was to appoint the elders and their chairman (see section 4 of the [Land Dispute Tribunals Act](#) Cap (303 A) (now repealed)) and the elders and their chairman were themselves appointed from a larger pool of elders nationally appointed by the relevant Minister via an official Kenya gazette notice. (See section 5 of the same Act).

11. The elders would then sit, deliberate, and make their decision and their decision could not in law relate to ownership of any land. It could only relate to division of land, fixing of boundaries to land, claim to work or occupy land and /or trespass to land. (See section 3 of the Act). The contest in this matter was essentially about ownership and the tribunal therefore had no mandate in law to entertain it.
12. The decision made by the tribunal could be appealed within 30 days to the Land Disputes Appeal Committee and the decision of that committee would be final except that a window of opportunity was offered to the aggrieved party to appeal to the High Court within 60 days on points of Law only (see section 8 of the Act).
13. What is before the court does not appear to have followed the process already outlined here. The decision appealed from was clearly made by a Land Adjudication Officer on 21/11/1991. The record of proceedings is actually stamped by the adjudication office and it clearly shows that the proceedings were in the nature of an objection. The record also shows that the right of appeal only existed for 60 days.
14. The proceedings that triggered the filing of the Judicial Review proceedings before this court were filed in the year 2001. Those proceedings are in the form of an appeal before the minister against the objection proceedings whose outcome was communicated to the parties on 21/11/1991. It is plain that the appeal was filed long after the 60 days allowed under section 29 of the [Land Adjudication Act](#). In fact the appeal was filed 10 years after the decision. And when it was filed, it took over 12 years to hear it and make a decision.
15. Basically, the record does not show that the matter was conducted under the now repealed [Land Disputes Tribunals Act](#). Instead, it was conducted under the [Land Adjudication Act](#) but even under that Act, the proceedings were filed outside the 60 days period allowed by Law. They were therefore illegal proceedings.
16. It appears clear to me that if the position is that the Land Disputes Tribunal handled the matter, then that was done outside the Law. The appeal was filed way beyond the time allowed by Law. Those who handled the proceedings were also not the persons envisaged by the Law. Further, if the Law is the [Land Disputes Tribunal Act](#), then it had already been repealed in the year 2013 when the decision on the appeal was rendered. And under the [Land Disputes Tribunal Act](#), there was no jurisdiction to handle the matter.
17. But if the matter is viewed as one conducted under the [Land Adjudication Act](#) the illegality surrounding or relating to it consists in the fact that it was filed outside the 60 days period allowed by section 29 of the [Land Adjudication Act](#). That is why I have observed elsewhere that the proceedings were illegally conducted. Filing an appeal is not an automatic right of a party. It is a right normally given by the law and the time to exercise the right is usually given. It was 60 days in this case.
18. In such circumstances, and given the prevailing scenario, the decision made cannot be said to be a legal one. It therefore makes sense when the ex parte applicant avers that the decision was unlawful and not made legally. In fact I know of no law that gives a party a period of over 10 years to file an appeal. The Law applicable in this matter certainly did not give such period.

In light of the foregoing, I make a finding that the order of *certiorari* sought is merited as prayed for in the application. I make no order as to costs.



JUDGEMENT DATED, SIGNED and DELIVERED in open court at EMBU this 23RD day of MAY, 2023

In the presence of Njeru Ngare for Exparte applicant, Karani for respondents and in the absence of interested party.

A. KANIARU

JUDGE –ELC, EMBU

23/5/2023

