



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MISCELLANEOUS CIVIL APPLICATION NO. 74 OF 201**

REPUBLIC .....APPLICAN  
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AND

**THE PROVINCIAL LAND DISPUTES APPEAL**

COMMITTEE FOR CENTRAL PROVINCE.....RESPONDENT

**EXPARTE**

**MARGARET BEATRICE MURIGI**

**JUDGEMENT**

1. By a Notice of Motion dated 14<sup>th</sup> September, 2011, the ex parte applicant herein, **Margaret Beatrice Murigi**, seeks the following orders:
  1. **An order of Certiorari to bring into this Honourable Court and quash the decision of the Provincial Land Disputes Appeals Committee for Central Province made on 14<sup>th</sup> July 2011.**
  2. **An order of prohibition prohibiting the Magistrate's Court Githunguri and Land Registrar Kiambu from acting on the decision of Provincial Land Disputes Appeals Committee for Central Province made on 14<sup>th</sup> July 2011.**
  3. **That Costs of this application be in the cause.**
2. The application is supported by an affidavit sworn by the applicant herein, **Margaret Beatrice Murigi** on 1<sup>st</sup> September 2011.
3. According to the applicant, she is the registered proprietor of Githunguri/Kimathi/659 measuring approximately 0.81 Hectares. Sometimes in the year 2008 the applicant filed a case No.LND/16/20/31/2008 at the Land Disputes Tribunal in Githunguri against one **Stephen Waweru Njenga** for trespassing on the said land.
4. The dispute was heard by the Land Tribunal Githunguri in Proceedings in which the applicant appeared and gave evidence and the Land disputes Tribunal visited Githunguri/Kimathi/659 before proceeding to make an award. It is the applicant's case that notwithstanding his evidence and submissions the land Disputes Tribunal, Githunguri proceeded to determine the matter and made an award that **Mr. Stephen Waweru Njenga** would only be evicted after being refunded Kshs.1,570,000/= together with an extra Kshs.100,000/= being down payment from **Stephen Waweru Njenga** for the sale agreement dated 25<sup>th</sup> May 1994. Being aggrieved with the said decision the applicant appealed to the Provincial Land Dispute Committee for Central Province on 6<sup>th</sup> March 2009 which Appeal was heard and determined on 14<sup>th</sup> July 2011 and the Tribunal

- proceeded to award the land known to **Stephen Waweru Njenga** purportedly by way of adverse possession.
5. It is the applicant's contention that the said decision was made it was made ultra vires the **Land Disputes Tribunal's Act** in that the Tribunal dealt with the issue of ownership of Githunguri/Kimathi/659 which was clearly not within their powers.
  6. It is further contended that prior to the filing of the above case **Stephen Waweru Njenga** had filed H.C.C. No 12 of 1995 at Nairobi (**Stephen Waweru Njenga –vs- Mrs Margaret Beatrice Murigi**) and S.P.M.C. No.138 of 2006 at Kiambu (**Stephen Waweru Njenga –vs- Margaret Beatrice Murigi**) which were both dismissed for want of prosecution. The cases were.
  7. It is the applicant's belief based on advice from his advocates that this is a proper case for the issuance of orders of Certiorari and Prohibition to quash the decision of the Land Disputes Tribunal and to prohibit the court or Land Registrar from implementing the award which was made without any jurisdiction and unconstitutionally takes away the applicant's proprietary rights.
  8. In support of her case written submissions were filed on behalf of the applicant. However, apart from reiterating the facts as deposed to in the verifying affidavit, the rest of the submissions seem to have been totally unrelated to this case. For example the submissions referred to a claimant by the name of **Richard Wairumbi Njenga** and further contended that the Tribunal purported to determine an ownership issue and purported to create access land over a person's private land. According this Court did not derive any assistance from the said submissions.
  9. I have considered the application as well as the documents on record. The issue for determination by the Court in this application is whether the Provincial Land Disputes Appeals Committee had the jurisdiction to entertain the dispute that was before it. Before dealing with the Appeals Tribunal it is necessary in my view to deal with the jurisdiction of the Land Disputes Tribunal. The said Tribunal's jurisdiction was circumscribed in section 3 of the repealed **Land Disputes Tribunals Act** under which it was provided that:

***(1) Subject to this Act, all cases 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.***

10. In its decision the Land Disputes Tribunal in effect granted conditional orders of eviction of the said **Stephen Waweru Njenga** and in so doing in effect decreed a sum of Kshs 1,570,000.00 in favour of the said **Stephen Waweru Njenga** in respect of developments made on the land by the said **Stephen Waweru Njenga**. The Tribunal went further and in effect awarded the said **Stephen Waweru Njenga** a sum of Kshs 100,000.00 being down payment for the purchase of the land.
11. In its decision, the Tribunal found that the rejection of the application for Consent of the Land Control Board was what led to differences between the applicant herein and the said **Stephen Waweru Njenga**. It is trite that effect of failure to obtain the consent of the said Board is to render any such transaction void.
12. In **Jacob Michuki Minjire vs. Agricultural Finance Corporation Civil Appeal No. 61 of 1982**, the Court of Appeal held that if the consent of the Land Control Board is not obtained where necessary the transaction is void and a party cannot be guilty of fraud if he relies on the same since the duty to obtain consent is on both parties. The Court further held that if the consent of the Land Control Board is not obtained the parties are restored to *status quo ante* while in between there is merely a *de facto* agreement which has no legal effect but if the consent is obtained the transaction binds the parties which proceeds to completion. In that case, the Court was of the opinion that the only remedy available where the consent is not obtained is to sue for the money paid as a debt and not for general damages.
13. Similarly in **Omuse Onyapu vs. Lawrence Opuko Kaala Civil Appeal No. 21 of 1992**, the same Court held that if the transaction for the sale of land is a controlled transaction involving the sale

- of an agricultural land within the meaning of section 6 of the *Land Control Act*- Cap. 302 Laws of Kenya, it is null and void for all purposes for lack of consent of the appropriate land control board in respect of that transaction. It follows therefore that the money or other valuable consideration paid under that void controlled transaction but, not the cost of the improvement on the land whether claimed as general damages or special damages, is recoverable as a civil debt without prejudice to penal consequences imposed by Section 22 of the Act.
14. It follows that the both under the *Land Control Act* and the *Land Disputes Act* the Tribunal had no jurisdiction to grant the orders it made in favour of the said **Stephen Waweru Njenga**.
15. On appeal the respondent set aside the decision of the Land Disputes Tribunal but proceeded to substitute therefor an order in favour of the said **Stephen Waweru Njenga** awarding him the suit land by way of adverse possession. From the provisions dealing with the jurisdiction of the Tribunal, it is clear that the Tribunal had no powers to deal with adverse possession. Such a claim could only be dealt with by a proper suit filed in Court.
16. In **Republic vs. Kapsabet Land Disputes Tribunal & Keter Kipchoge Misoi Ex Parte Christine Jepkosgei Ngetich Eldoret HCMCA No. 25 of 2002**, **Mohammed Ibrahim, J** (as he then was) held:

**“The Land Disputes Tribunal under the Land Disputes Act clearly has no jurisdiction to determine claims of prescription or adverse possession as such causes of action can only be heard and determined by the High Court.”**

17. The Respondent’s decision was in my view irrational as the said **Stephen Waweru Njenga** did not make any claim before it. What was before it was an appeal by the applicant and the Respondent had no jurisdiction to decree the suit land in favour of the said **Stephen Waweru Njenga**.
18. It follows that both the decision of Githunguri District Lands Tribunal and the Respondent was without jurisdiction. Dealing with the failure by a party to comply with certain procedural requirements in light of allegation of excess of jurisdiction by the Tribunal, **Nyamu, J** (as he then was) in **Republic vs. Kajiado Lands Disputes Tribunal & Others ex parte Joyce Wambui & Another Nairobi HCMA. No. 689 of 2001 [2006] 1 EA 318** held that despite the irregularities the Court cannot countenance nullities under any guise since the High court has a supervisory role to play over inferior tribunals and courts and it would not be fit to abdicate its supervisory role and it has powers to strike out nullities.
19. In the premises I find merit in the Notice of Motion dated 14<sup>th</sup> September 2011 and issue an order of certiorari bringing into this Court for the purposes of being quashed the decision of the Provincial Land Disputes Appeals Committee for Central Province made on 14<sup>th</sup> July 2011 which decision is hereby quashed. Similarly I hereby grant an order of prohibition prohibiting the Magistrate’s Court Githunguri and Land Registrar, Kiambu from acting on the decision of Provincial Land Disputes Appeals Committee for Central Province made on 14<sup>th</sup> July 2011. In light of the fact that the applicant had received part payment in respect of the sale agreement and there is no evidence that the said sum was refunded, there will be no order as to costs.

**Dated at Nairobi this 11<sup>th</sup> December 2013**

**G V ODUNGA**

**JUDGE**

***Delivered in the presence of Mr Kimani for Mr Gaeta for the applicant***

