



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT NAKURU**

**Judicial Review 111 of 2011**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF  
CERTIORARI BY:**

**REPUBLIC.....APPLICANT**

**VERSUS**

**NYERI PROVINCIAL APPEALS COMMITTEE.....  
.....RESPONDENT**

**AND**

**KARIUKI KAHINGA NJATHA.....INTERESTED  
PARTY**

**AND**

**RUTH WANGUI MWANGI.....1<sup>ST</sup> EX PARTE  
APPLICANT**

**PAUL WAMBUGU MWANGI.....2<sup>ND</sup> EX PARTE  
APPLICANT**

**PETERSON MUKUNDI MWANGI.....3<sup>RD</sup> EX PARTE  
APPLICANT**

**DICKSON NJUGUNA MWANGI.....4<sup>TH</sup> EX PARTE  
APPLICANT**

SIMON NJENGA MWANGI.....5<sup>TH</sup> EX PARTE  
APPLICANT

RAHAB WANJIKU MWANGI.....6<sup>TH</sup> EX PARTE  
APPLICANT

NICHOLAS KARIUKI MWANGI.....7<sup>TH</sup> EX PARTE  
APPLICANT

JOSEPH NJOGU MWANGI.....8<sup>TH</sup> EX PARTE  
APPLICANT

WILSON MBORA MWANGI.....9<sup>TH</sup> EX PARTE  
APPLICANT

DAVID THUMBI MWANGI.....10<sup>TH</sup> EX PARTE  
APPLICANT

JOHN THIONGO MWANGI.....11<sup>TH</sup> EX-PARTE  
APPLICANT

FRANCIS MBOCI MWANGI.....12<sup>TH</sup> EX-PARTE  
APPLICANT

### RULING

In their Notice of Motion dated 19<sup>th</sup> October 2011 and filed on 21<sup>st</sup> October 2012 the ex parte applicants (*the Applicants*) sought an order of *certiorari* to issue and remove to this court the proceedings and award of the Nyeri Provincial Appeals Committee in Appeal No. (*Claim*) Nyandarua 5 of 2006 (between **Kariuki Kahinya Njatha vs. Mwangi Wambugu and Family** (*the Applicants*)) for purposes of having the same quashed. The Applicants also asked for costs.

Despite service, the Interested Party has never responded to the Notice of Motion. Miss Khatambi learned State Counsel who appeared on behalf of the Respondents (*Nyeri Provincial Appeals Committee*), submitted that she was not opposed to the application.

Essentially the Motion herein concerns ownership of some 8 acres of land which the Applicants contend was awarded to the Interested Party by the Respondent by reversing the decision of the North Kinangop Division Nyandarua District Land Disputes Tribunal Case No. 051 of 2005 NYA/KITIRI/177 & 176 between the Interested Party and the Applicants and in which the Tribunal found in the

Applicants' favour. The Applicants are unhappy about the decision of the Appeals Committee, and they say, it was made without jurisdiction.

In law, jurisdiction is everything. It concerns the power and therefore competence of a tribunal, to make a lawful decision. If a court or tribunal does not have the capacity to exercise power or jurisdiction over a dispute, the chances when challenged are likely that the decision will be set aside, nullified, or quashed, language that is used interchangeably in these matters.

According to both the records of the North Kinangop Division Nyandarua Lands Disputes Tribunal, and indeed the Respondent in his matter, the Interested Party's claim is an area of 8 acres (*he said "to be enclosed in a fence to plot 176"*). The dispute before the Land Disputes Tribunal and the Lands Disputes Appeals Committee was cloaked as a boundary dispute so as to give the Tribunal and later the Appeals Committee, jurisdiction. The Applicants contend that the Appeals Committee (*the Respondent*) and indeed the Tribunal had no jurisdiction over the matter. Under Section 3(1) of the Land Disputes Tribunals Act 1980, (*No. 18 of 1990*), such Tribunal's jurisdiction is limited to disputes relating 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.***

In this matter both the Applicants and the Interested Party were allocated their respective parcels of land by the Settlement Fund Trustees in 1964 or thereabouts. The late Mwangi Wambugu the Applicants father, was allocated Plot 176. The Interested Party was allocated Plot No. 177. Both obtained Title Deeds for their respective portions. Their common boundary as the Tribunal also confirmed upon a visit to the land was a water cut-off drainage point where the two neighbours established fences, leaving about 9 ft. common area between their respective fences for public usage. This situation was maintained for a period of 40 years, that is, until 2005 when the Interested Party laid claim to the Applicant's 8 acres by removing his fence and enclosing the Applicant's 8 acres.

Although the Tribunal ordered the Interested Party to remove and return his fence to its original position, and therefore found in favour of the Applicants, technically, the issue was one of a claim for 8 acres of land, the property of the Applicants' father, and the Tribunal had therefore no jurisdiction, and should have directed parties to the High Court, as prescribed under Section 159 of the Registered Land Act, Cap. 300, Laws of Kenya.

However as the Interested Party appealed to the Provincial Land Appeals Committee, the true nature of the claim came out, that the Interested Party was granted 8 acres of the Applicants' land (Plot 176).

I have carefully reviewed the proceedings in both the Land Disputes Tribunal and the Appeals Committee.

**Firstly**, Naivasha Principal Magistrate's Court had dealt with the land in question in P.M.C. Succession Cause No. 52 of 2009 and the land had been vested in Ruth Wangui Mwangi, the 1<sup>st</sup> Applicant herein. The Appeals Committee had no jurisdiction to deal with a succession matter. If the Interested Party had any issue or claim to the land, he should have sued the 1<sup>st</sup> Applicant through the normal civil court process.

**Secondly**, the Appeals Committee's jurisdiction is like that of the Lands Disputes Tribunal limited. It cannot determine issues concerning ownership of land. Its decision is therefore a nullity. It cannot inquire a matter which it has no jurisdiction (**ANISMINIC VS. FOREIGN COMPENSATION COMMISSION [1969] 2 A.E. 147** adopted in **REPUBLIC VS. KAJIADO LAND DISPUTES**

**TRIBUNAL** (*ex parte* **JOYCE WANGUI & LILIAN MARANJA** (Nairobi H.C. Misc. Appl. No. 689 of 2001)).

**Thirdly** Section 7 of the Limitation of Actions Act (*Cap. 22, Laws of Kenya*) prohibits any actions on land after 12 years. Similarly Section 13 of the Land Disputes Tribunals Act forbids the Tribunals from entertaining any matter which is time-barred under the Limitation of Actions Act.

**Fourthly**, the other Applicants are respective holders of titles to plot 176, after distribution by the 1<sup>st</sup> Applicant. Their land cannot be given away the Appeals Committee without their being granted a hearing. That is contrary to the rules of natural justice.

For all those reasons, I allow the Applicants' Notice of Motion first referred to above. I also award the costs herein to the Applicants.

There shall be orders accordingly.

**Dated, signed and delivered at Nakuru this 8<sup>th</sup> day of June, 2012**

**M. J. ANYARA EMUKULE**  
**JUDGE**