



REPUBLIC OF KENYA

High Court at Nakuru

Judicial Review 95 of 2010

**IN THE MATTER OF AN APPLICATION BY SAMUEL NJOROGE NJENGA THE LEGAL
GUARDIAN AND MANAGER OF MOSES NJENGA NJOROGE FOR AN ORDER OF
CERTIORARI**

REPUBLIC.....APPLICA

**NT
VERSUS**

**THE RIFT VALLEY PROVINCIAL LAND DISPUTES APPEALS
TRIBUNAL.....1STRESPONDENT**

**THE CHIEF MAGISTRATE AT NAKURU.....2ND
RESPONDENT**

AND

SAMUEL NJOROGE NJENGA (*the Legal Guardian*

***and Manager of Moses Njenga Njoroge*).....SUBJECT**

**JOSEPH KAMAU MWANGI.....INTERESTED
PARTY**

RULING

1. In its Notice of Motion dated 29th October 2010 and filed on 1st November, 2010, the *ex parte* Applicant sought an order of certiorari to remove the proceedings and verdict of the Rift Valley Land Disputes Appeals Committee made on 11th March 2010.
2. The Motion was based upon the Statement of Facts and the Verifying Affidavit attached to the Chamber Summons dated and filed on 12th October 2010 in which the Applicant sought leave of court to commence judicial review proceedings for the said order of certiorari. Such leave having been granted on 15th October 2010 the *ex parte* Applicant filed the Motion first referred to above.
3. The genesis of the Appeal before the Respondent arose from the decision of the Bahati Land Disputes Tribunal, Land Dispute No. 14 of 2005 in which that Tribunal awarded the Interested Party 3 acres of land pursuant to an Agreement for Sale of Land between the *ex parte* Applicant's father and the Interested Party. The said award was adopted as an order of court in Nakuru on 14th March 2008.

4. The Applicant's case is that the Respondent, the Rift Valley Provincial Land Disputes Appeals Committee had no jurisdiction to determine a matter which concerned an Agreement for Sale of land.

5. In answer to this argument Mr. Rubua Nguire, learned counsel for the Interested Party filed grounds of opposition in which he argued on behalf of the Interested Party that -

(a) the orders sought if granted would be in vain,

(b) the validity of the Applicant's title has never been in question and that no orders had been made for its cancellation,

(c) that the Appeals Committee did not rule on the ownership of LR No. 9235/3 as that was not an issue in dispute,

(d) that the Appeals Committee confirmed the Interested Party's right to work and occupy the land.

6. The rationale behind the Interested Party's grounds of opposition is basically that without including the decision of the Bahati Land Disputes Tribunal and the order of the subordinate court adopting the award of the Tribunal as an order of court, any orders by this court purporting to quash the decision of the Respondent would leave both the order of the subordinate court intact, and that therefore such order would be in vain.

7. I neither agree with nor accept this argument on the part of the Interested Party's counsel. The reason is not far to look. The basis of both the Respondent's decision and the order of adopting the award, in favour of the Interested Party, is the decision of the Bahati Land Disputes Tribunal. If that decision was within the jurisdiction of the Tribunal, then it would be upheld, if it is not, it will be quashed. The question therefore is, did the Bahati Land Disputes Tribunal have the necessary jurisdiction to determine a matter relating to sale of land? This question can only be answered in relation to the jurisdiction conferred upon Land Disputes Tribunals by Section 3(1) of the Land Disputes Tribunals Act 1990 (*No. 18 of 1990*), (*Cap. 303A Laws of Kenya*) before its repeal by the The Environment and Land Court Act, 2011 (*No. 19 of 2011*). The jurisdiction of those Tribunals was limited by Section 3(1) to determining questions relating to -

(a) the division of, or the determination of boundaries to land;

(b) a claim to occupy or work land, or

(c) trespass to the land.

The issue before the Bahati Land Disputes Tribunal, and indeed the Provincial Land Disputes Appeals Committee was not about any of those issues, but rather about the enforcement of a Sale Agreement dated 10th August 1987 between the *ex parte* Applicant's father, and the Interested Party for the sale to the latter of 2 acres of land being part of LR No. 9235/3. Even if the Interested Party had been in occupation of the 2 acres for the 12 years (*time to claim adverse possession*), or 25 years, double the period, the length of period did not confirm upon the Bahati Land Disputes Tribunal the jurisdiction to enforce the Sale Agreement, or to award the Interested Party the 2 acres under the Sale Agreement, or add another one acre to the Interested Party.

In **WAMWEA VS. CATHOLIC DIOCESE OF MURANG'A REGISTERED TRUSTEES** [2003] KLR Khamoni J. held inter alia - "***Tribunals and Land Disputes Appeals Committees do not have jurisdiction to hear disputes over title to land. Disputes over contracts are also not under that jurisdiction.***" Like the subordinate tribunal, the Provincial Lands Disputes Committee had no jurisdiction to award or uphold the decision of the Tribunal below it.

The Bahati Land Disputes Tribunal had no jurisdiction to enforce an Agreement for Sale of Land. That is a matter for this court, or the subordinate court under Section 159 of the Registered Land Act, (*Cap. 300, Laws of Kenya*). Its decision was a nullity, and a court of law cannot sanction an illegality. The purported adoption by the subordinate court was equally a nullity. Similarly the Respondent the Provincial Land Disputes Appeals Committee could not sanitize an illegality. Its decision is equally a nullity.

For those reasons, this court calls up, not only the decision of the Provincial Land Disputes Appeals Committee issued on 11th August 2010, but also the decision of the Bahati Land Disputes Tribunal, as well as the order of the subordinate court purporting to adopt, and the said awards, and by the order are called up to this court and quashed by the order of certiorari.

The *ex parte* Applicant shall have the costs of this Application.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 26th day of October, 2012

M. J. ANYARA EMUKULE

JUDGE