



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**JUDICIAL REVIEW MISC. CIVIL APPLICATION NO. 89 OF 2010**

**IN THE MATTER OF GITHUNGURI LAND DISPUTES TRIBUNAL AWARD IN D.O.  
TRIBUNAL CASE NO 2 OF 2010 (GITHUNGURI LAW COURTS)**

**AND**

**IN THE MATTER OF PROVINCIAL APPEALS COMMITTEE (NYERI) CASE NO. 1 OF 2010**

**AND**

**IN THE MATTER OF THE AWARD OF NYERI PROVINCIAL APPEALS COMMITTEE  
DATED 14<sup>TH</sup> OCTOBER 2010**

**REPUBLIC.....APPLICANT**

**VERSUS**

**GITHUNGURI LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT  
THE NYERI PROVINCIAL APPEALS COMMITTEE.....2<sup>ND</sup> RESPONDENT  
GITHUNGURI PRINCIPAL MAGISTRATE.....3<sup>RD</sup> RESPONDENT**

**EX PARTE:**

**JANE NJERI KIBUTHA  
GLADYS NJAMBI KABI  
ELIZABETH THABA KARURA  
AGNES WAIRIMU KARANJA  
REBECCA WANJIRU KARURA**

**PENNINAH WAMBUI KINUTHIA .....INTERESTED PARTY**

## RULING

The ex parte applicants, hereinafter referred to as “**the applicants**”, filed an application seeking an order of certiorari to quash an award delivered by the Nyeri Land Disputes Appeals Tribunal on 14<sup>th</sup> October, 2010 in Tribunal Appeal Case No. 1 of 2010, arising from the decision/award of Githunguri Land Disputes Tribunal which had been forwarded to Githunguri Law Courts for adoption. The subject matter of the dispute was Land Parcel No. **GITHUNGURI/KIMATHI/966**, hereinafter referred to as “**the suit land**”. The applicant also sought an order of prohibition directed at Githunguri Law Courts to prohibit the 3<sup>rd</sup> respondent from receiving and adopting as an award and issuing a decree from the decision of the 2<sup>nd</sup> respondent.

The grounds upon which the aforesaid reliefs were sought are as follows:

1. **The applicants are the registered proprietors of the suit land.**
2. **The 1<sup>st</sup> respondent, although it acted legally and decided the dispute properly, did not have jurisdiction *ab initio* to deal with the suit land.**
3. **The 2<sup>nd</sup> respondent did not have jurisdiction to entertain the dispute involving a registered parcel of land.**
4. **The two tribunals acted without any lawful authority and against legitimate expectation of the applicants.**

The 1<sup>st</sup> applicant for and on behalf of all applicants swore an affidavit in support of the application. The applicants are the registered proprietors of the suit land. They were so registered on 29<sup>th</sup> December, 2009 when a title deed was issued to them. The interested party is a blood sister of the previous owner of the suit land and is also the registered proprietor of a parcel of land known as **GITHUNGURI/KIMATHI/967**.

The applicants stated that the interested party and the previous owner of the suit land were not seeing one another eye to eye when the interested party’s late sister was alive. Their differences related to ownership of the suit land. The applicants further stated that when the interested party’s sister died, the interested party and her children started interfering with the suit land which had lawfully been transferred to the applicants during the lifetime of the deceased.

When the land dispute was filed before Githunguri Land Disputes Tribunal, in its award made on 15<sup>th</sup> February, 2010, the tribunal held that the suit land was registered in the name of Hannah Karura Kimunya (deceased) who was a sister to Penninah Wambui Kinuthia, the interested party. The deceased was the foster mother to the applicants from 1982 until her demise. It further held that the deceased transferred the land to Jane Njeri Kibutha (the 1<sup>st</sup> applicant) and others before she died. The tribunal ordered that the suit land remains as it was and the Executive Officer was ordered to re-affirm the present registration to the current owners.

An appeal was lodged by the interested party to the 2<sup>nd</sup> respondent. The appellate body heard both parties and perused the record of the Githunguri Land Disputes Tribunal. The 2<sup>nd</sup> respondent gave the interested party “**workland on the suit land number GITHUNGURI/KIMATHI 966**”.

The record does not show whether any of the respondents and the interested party filed any replying

affidavit. However, it was agreed between **Mr. P.K. Njoroge** for the applicants and **Mr. Gakaria** for the interested party that the matter be determined by way of written submissions that had been filed by the said parties.

The applicants submitted that the provisions of **Section 3(1)** of the **Land Disputes Tribunal Act** oust the jurisdiction of land disputes from hearing disputes over registered parcels of land. They further submitted that as they were the registered proprietors of the suit land, neither of the two tribunals had any power to interfere with their rights of ownership thereof. Any dispute relating to ownership of the suit land could only be referred to the civil courts, they submitted.

The interested party submitted that the tribunals had power to hear and determine questions relating to occupation of the suit land. She further contended that the dispute was brought up by the applicants' fraudulent acts of registering the suits land in their names by use of forged documents and thereby disinheriting the interested party who is the rightful heir to the suit land. She said that the registration of the suit land in the names of the applicants had been challenged in a civil suit which is before this court. It was submitted that the 2<sup>nd</sup> respondent rightly found for the interested party and allowed her to work on the suit land and did not deal with the issue of ownership which was outside its mandate.

From the affidavit of the applicants and the submissions on record, it is evident that the dispute over the suit land before the two tribunals related to ownership of the same. As earlier stated, the applicants were registered as the proprietors of the suit land and issued with a title deed on 29<sup>th</sup> December, 2009. Under **Section 27** of the **Registered Land Act** their proprietorship rights are indefeasible save the overriding interests set out in **Section 30** of the said **Act**.

**Section 3(1)** of the **Land Disputes Tribunal Act** sets out the powers of the Land Disputes Tribunals. Their jurisdiction is limited to determining cases of a civil nature involving a dispute to –

- (a) **the decision of or the determination of boundaries to land including land held on common;**
- (b) **a claim to occupy or workland; or**
- (c) **a trespass to land.**

It is now settled law that a Land Disputes Tribunal has no power to entertain disputes relating to ownership of registered land. A land tribunal cannot purport to pronounce an award that contradicts the contents of the register under any registration regime. See **WAMWEYA vs CATHOLIC DIOCESE OF MURANG'A REGISTERED TRUSTEES [2003] KLR 389.**

The dispute before the Githunguri Land Disputes Tribunal was filed in the year 2010 when the suit land had already been registered in the names of the applicants. There is no evidence on record as to how the registration was effected and I cannot therefore state whether it was done fraudulently or not. In any event, that is outside the province of this ruling.

The 2<sup>nd</sup> respondent purported to give to the interested party what it referred to as “**workland on the suit land**”. It is not clear what was intended by that phrase. If it was intended to give the interested party the right to utilize the suit land as a proprietor, that was not permissible in law.

Since it was clear to the two tribunals that the central dispute between the applicants and interested party was ownership of the land they ought to have referred the parties to the High Court since they had no jurisdiction to entertain the claim. A decision made by a body which lacks jurisdiction is null and void. In **MACFOY vs UNITED AFRICA LIMITED [1961] 3 ALL ER 1169**, Lord Denning stated:

**“If an act is void, then it is in law a nullity and not a mere irregularity. 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.”**

Having established that none of the two tribunals had jurisdiction to make the awards which they did, such awards are not enforceable and even if they have been adopted by the 3<sup>rd</sup> respondent as judgment of the court, such judgment is of no legal consequence. The dispute over ownership of the suit land ought to be referred to the High Court by way of a civil suit for determination.

In view of the foregoing, I grant the orders sought by the applicants. The interested party shall bear the costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25<sup>TH</sup> DAY OF MAY, 2011.**

**D. MUSINGA**

**JUDGE**

**In the presence of:**

**Nazi – Court Clerk**

**Mr. Gakaria for the Interested Party**

**No appearance for the Applicant**