



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**JUDICIAL REVIEW APPLICATION NO. 56 OF 2010**

**AND**

**IN THE MATTER OF THIKA COURT CASE NO. DO 61 OF 2010**

**REPUBLIC OF KENYA .....APPLICANT**

**VERSUS**

**RUIRU DISTRICT LAND TRIBUNAL.....1<sup>ST</sup> RESPONDENT**  
**THE SENIOR PRINCIPAL MAGISTRATE THIKA .....2<sup>ND</sup> RESPONDENT**  
**NYERI LAND DISPUTES APPEAL TRIBUNAL.....3<sup>RD</sup> RESPONDENT**  
**EX PARTE: ANDREW MURUNGA KIRI .....4<sup>TH</sup> RESPONDENT**

**AND**

**MARTIN GATHECA.....INTERESTED PARTY**

**RULING**

The ex parte applicant's application dated 9<sup>th</sup> September, 2010 seeks the following orders:

- “1. That an order of prohibition be issued directed at the Ruiru District Land Tribunal and the Senior Principal Magistrate, Thika, to prohibit them from receiving, reading and forwarding the award for adoption as judgment of the court.**
- 2. That an order of certiorari do issue directed to the High Court to quash the decision and orders that had been issued by the Ruiru Land District Dispute Tribunal in RUIRU/LDT/04 of 2010.**

### 3. That the costs be borne by the respondents.”

The notice of motion was supported by a statutory statement and an affidavit sworn by the ex parte applicant. The ex parte applicant is a registered proprietor of a parcel of land known as **L.R. No. Ruiru/East Block/1 (Githunguri) 1633**, hereinafter referred to as the “**suit land**”. A title deed in respect of the suit land was issued to him on 30<sup>th</sup> March, 1992. The suit land was initially allocated to him by Githunguri Constituency Ranching Company Limited.

The deponents stated that a complaint was filed by a fraudster at the Ruiru District Tribunal which declared that the fraudster is the owner of the land. The proceedings of the Ruiru District Land Tribunal annexed to the ex parte applicant’s affidavit show that the claimant was the interested party herein. The tribunal, after hearing the dispute held that the suit land had been allocated to the claimant’s deceased father, Antony Kamau Kinyanjui. It therefore awarded the suit land to the claimant, the interested party herein.

The ex parte applicant stated that the tribunal exceeded its jurisdiction in making the aforesaid award. By so doing it purported to nullify his lawful title to the suit land.

In his replying affidavit, the interested party stated that the ex parte applicant has no proprietary right over the suit land but his rights lie in respect of land parcel number Ruiru KIU/Block 2/1633. He therefore supported the award by the tribunal. He urged the court to dismiss the ex parte applicant’s application.

I have perused the brief submissions that were filed by the advocates for the parties herein. The jurisdiction of a land dispute tribunal is clearly set out by the provisions of **Section 3** of the **Land Disputes Tribunal Act**. Such a tribunal does not have power to nullify a title deed. There is no dispute that the registered proprietor of the suit land is the ex parte applicant. There is no evidence to suggest otherwise. By awarding the suit land to the interested party the 1<sup>st</sup> respondent acted *ultra vires* its jurisdiction.

Whereas ordinarily a court or a statutory body cannot be prevented from acting in accordance with the requirements of the law, where it is shown that the tribunal has exceeded its jurisdiction and is about to submit to a court a decision that is arrived at in contravention of the law, there is nothing wrong, in my view, if an ex parte applicant urges the court to prohibit the unlawful act. In any event, the award is void *ab initio* and even if the same were to be adopted by the 2<sup>nd</sup> respondent, the resultant decree would be of no legal consequence.

In light of the foregoing, the orders sought by the ex parte applicant in the aforesaid notice of motion are granted as prayed. The interested party shall bear the costs of the application.

**DATED, SIGNED and DELIVERED at NAIROBI THIS 16<sup>TH</sup> DAY OF MAY, 2011.**

**D. MUSINGA**

**JUDGE**

**In the presence of:**

**Nazi – Court Clerk**

**No appearance for the Ex Parte Applicant**

**No appearance for the Respondent**