



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**MISCELLANEOUS CIVIL APPLICATION NO. 374 OF 2010**

**IN THE MATTER OF: AN APPLICATION FOR ORDERS OF PROHIBITION AND  
CERTIORARI BY THE**

**REPUBLIC AGAINST LAND DISPUTES TRIBUNAL, RUIRU AWARD IN CASE NO.  
LDT/O7/2010;**

**AND**

**IN THE MATTER OF: CHIEF MAGISTRATE'S COURT AT THIKA IN LAND CASE NO. 83  
OF 2010**

**AND**

**IN THE MATTER OF: THE LAND DISPUTES TRIBUNAL ACT, NO. 18 OF 1990**

**AND**

**IN THE MATTER OF: THE REGISTERED LAND ACT, CAP 300 OF THE LAWS OF  
KENYA**

**BETWEEN**

**REPUBLIC .....APPLICANT**

**AND**

**LAND DISPUTES TRIBUNAL .....1<sup>ST</sup> RESPONDENT  
CHIEF MAGISTRATE COURT, THIKA.....2<sup>ND</sup> RESPONDENT**

AND

JOHN GATHUA.....INTERESTED PARTY  
KAMAU MUNDIA KARUGA .....EX PARTE APPLICANT

**RULING**

The ex parte applicant's notice of motion seeks two main orders:

- (a) An order of prohibition to prohibit the Chief Magistrate's Court at Thika and Ruiru Land Disputes Tribunal from hearing and entertaining any further proceedings or issuing any further orders in Land Case No. 83 of 2010, Thika, and Ruiru LDT/07/2010, respectively.**
- (b) An order of certiorari to bring to this court and quash proceedings and award of the Ruiru Land Disputes Tribunal in respect of LDT/07/2010 and subsequent orders of Principal Magistrate's Court at Thika made on 29<sup>th</sup> November, 2010 adopting the said award as judgment of the court and any other orders issued thereafter in the aforesaid case.**

The application was made on the following grounds:

- “(a) The applicant is the lawful and registered owner of the parcel of land No. RUIRU KIU BLOCK 2/4260.**
- (b) The Claimant JOHN GATHUA is the applicant's brother who filed a claim against the applicant in RUIRU Land Dispute Tribunal No. LDT/07/2010.**
- (c) The award was filed in court on 16<sup>th</sup> September 2010.**
- (d) After the dispute was heard the verdict was given on 16<sup>th</sup> September 2010.**
- (e) On the 29<sup>th</sup> November 2010 the Chief Magistrate Court confirmed the award that the claimant be given quarter of an acre from the suit land.**
- (f) The rules of natural justice at the hearing were absent at the Ruiru Land Dispute Tribunal.**
- (g) The Tribunal lacks jurisdiction under the law to entertain any proceedings relating to the Registered (land) under Registered Land Act. (Cap. 300) and especially to order for subdivision.**
- (h) There was no basis whatsoever for the tribunal to order that my Land Parcel No. RUIRU KIU BLOCK 2/4260 be subdivided between me and my brother the claimant.**
- (i) The Chief Magistrate should not entertain any proceedings and make any orders for subdivision of the Land No. RUIRU KIU BLOCK 2/4260 pursuant to the Ruiru Land Tribunal Award.**
- (j) The applicant undertakes as to costs and will abide by each and all conditions that may be imposed by the courts.”**

In his affidavit in support of the application, the ex parte applicant deposed that he is the registered proprietor of Land Parcel No. RUIRU KIU BLOCK 2/4260 hereinafter referred to as **“the suit property”**. He annexed thereto a copy of the Title Deed issued to him on 9<sup>th</sup> August, 1993 pursuant to the provisions of the Registered Land Act. The affidavit is a rehash of the aforesaid grounds.

The 1<sup>st</sup> and 2<sup>nd</sup> respondents did not file any replying affidavit. The interested party filed a replying affidavit and a preliminary objection. In his replying affidavit the interested party stated that all the rules of natural justice were duly observed by the tribunal and upon finalization of the hearing, the tribunal gave its award. The award, having been adopted as a judgment of the court and no appeal having been filed by the ex parte applicant, the tribunal's decision is conclusive. In the circumstances, he added, this court has no jurisdiction to hear any appeal relating to the said dispute. The same arguments are contained in the preliminary objection

Parties filed their respective submissions which I have carefully considered.

The main issue for determination is whether the Land Disputes Tribunal had jurisdiction to hear the dispute over the suit land. **Section 3(1)** of the **Land Disputes Tribunal Act** sets out the powers of the tribunal. Its jurisdiction is limited to determining cases of a civil nature involving a dispute 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) a trespass to land.**

The tribunal has no power to entertain disputes of ownership of registered land. See **WAMWEA vs CATHOLIC DIOCESE OF MURANG'A REGISTERED TRUSTEES [2003] KLR 389.**

It is trite law that any decision made by a court or quasi-judicial 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.”**

The tribunal's decision, having been made without jurisdiction, was null and void and of no legal effect. It matters not whether it has been adopted by the 2<sup>nd</sup> respondent as a judgment of the court.

The interested party argued that since the ex parte applicant had not lodged any appeal within the given period of thirty days from the date of the said decision, the same is now final. He further stated that this court lacks jurisdiction to hear appeals from decisions of the Land Disputes Tribunal.

This court is not considering an appeal from the Land Disputes Tribunal. The ex parte applicant came to court by way of a judicial review. A party who is aggrieved by a decision made by a court which lacks jurisdiction may commence judicial review proceedings to quash the proceedings and the decision made by such a court or body. This is what the ex parte applicant did. Failure to exercise the right of appeal did not in any way amount to a waiver of the right to obtain judicial review.

If the interested party has any claim over the suit property, he should file a suit in a court of competent

jurisdiction since it is a registered property.

For these reasons, the ex parte applicant's application is allowed and the orders sought therein are granted. The interested party shall bear the costs of the application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF MAY, 2011.**

**D. MUSINGA**

**JUDGE**

**In the presence of:**

**Nazi – Court Clerk**

**Miss Namisi for the Interested Party**

**Mr. Karumba holding brief for Mr. Onyiso for the Respondent**

**No appearance for the Ex Parte Applicant**