



**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**JUDICIAL REVIEW NO. 43 OF 2009**

**IN THE MATTER OF AN APPLICATION BY TABITHA WANJIKU NGANGA FOR AN ORDER OF CERTIORARI**

REPUBLIC.....APPLICANT

VERSUS

NYANDARUA OLKALOU DIVISION LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT

NYERI PROVINCIAL LAND APPEAL TRIBUNAL.....2<sup>ND</sup> RESPONDENT

NYAHURURU PRINCIPAL MAGISTRATE'S COURT.....3<sup>RD</sup> RESPONDENT

AND

SULEIMAN MWIHOTI KIMUNGE.....INTERESTED PARTY

**RULING**

This is a judicial review application brought under **Order 53 Rule 3** of the **Civil Procedure Rules** as well as **Section 8** and **9** of the **Law Reform Act**. It seeks an order of certiorari to quash the proceedings and decisions of the Nyandarua Ol Kalou Division Land Disputes Tribunal's award in Land Dispute Case No.23 of 2004, the Nyeri Provincial Land Disputes Appeals Committee in Appeal Case No. 33 of 2005 and the Nyahururu PMCC No.8 of 2009.

The application is based on the ground that the Tribunal and the Appeals Committee had no jurisdiction to entertain the matter.

The ex-parte applicant is the owner of all that piece of land known as **Nyandarua/Mawingo Salient/286** while the interested party is the owner of the adjoining piece of land known as **Nyandarua/Mawingo Salient/283**. On or about 30<sup>th</sup> March 2004 the interested party lodged a complaint with the Tribunal claiming that the ex-parte applicant had encroached onto 3 acres of his land. After hearing the matter the Tribunal found in his favour and ordered the District Surveyor to fix the correct boundary between the two pieces of land. The ex-parte applicant's appeal to the Appeals Committee was dismissed and on 14<sup>th</sup> April, 2009 the Principal Magistrate's court at Nyahururu confirmed the award thus provoking this application.

In their submissions counsel for the ex-parte applicant contended that this was not a boundary dispute but a claim over 1½ acres of the applicant's land. They also argued that the interested parties' claim was also statute barred. For those reasons they submitted that both the Tribunal and the Appeals Committee had no jurisdiction to entertain the dispute and urged me to allow this application.

Counsel for the interested party on the other hand submitted that this was a boundary dispute which the Tribunal had jurisdiction under **Section 3** of the **Land Disputes Tribunal Act** to deal with. On limitation they argued that the ex-parte applicant having submitted herself to the jurisdiction of the Tribunal and the Appeals Committee she cannot now be heard to complain that the matter was statute barred or that the Tribunal had no jurisdiction to deal with the matter.

In cross examination, the interested party admitted before the Tribunal that he and the ex-parte applicant have lived together and the boundaries between their pieces of land has not changed for the last 18 years. It follows that his claim was statute barred under the **Limitation of Actions Act, Section 13(3)** of the **Land Disputes Tribunal Act** forbids the Tribunals from entertaining claims which are statute barred. In the circumstances both the Tribunal and the Appeals Committee had no jurisdiction to entertain the dispute. Their awards are therefore a nullity.

Both the Tribunal and the Appeals Committee's decisions were made more than six months prior to the filing of this application. The Tribunal award was made on 17<sup>th</sup> October 2005 while the Appeals Committee's was made on 11<sup>th</sup> December 2008. By dint of **Order 53 Rule 2** of the **Civil Procedure Rules** they are therefore not amenable to be quashed by an order of certiorari. But the Principal Magistrate's order of adoption is. It was made on 17<sup>th</sup> April 2009 and the application for leave to commence these proceedings was filed on 4<sup>th</sup> May, 2009. The Tribunal decision which it adopted having been declared a nullity the adoption order is hereby quashed.

I note that both the Tribunal and the Appeals Committee directed the District Surveyor to go and fix the correct boundary between the parties' pieces of land. Although that is the right thing to do it is technically not right. **Section 22** of the **Registered Land Act** gives the authority to determine the boundary between pieces of land to the District Land Registrar for the area. I therefore direct that the parties do refer their boundary dispute to the Nyandarua District Land Registrar for determination and report back to this court. Mention on 12<sup>th</sup> October, 2010.

As both parties are trading accusations of encroachment, I order that each bears its own costs of this application.

**DATED and DELIVERED this 17<sup>th</sup> day of June 2010.**

**D. K. MARAGA**  
**JUDGE.**