



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**LAND AND ENVIRONMENTAL LAW DIVISION**  
**MISC. CIVIL APPLICATION NO.542 OF 2006**

**JANE KANYI KAHARA .....PLAINTIFF**

**VERSUS**

**LAND DISPUTES TRIBUNAL, KIAMBU.....1ST DEFENDANT**  
**PRINCIPAL MAGISTRATE – KIKUYU.....2ND DEFENDANT**  
**DISTRICT LAND SURVEYOR.....3RD DEFENDANT**  
**WAWERU TITI.....INTERESTED PARTY**  
**EXPARTE: JANE KIHARA**

**R U L I N G**

1. By a notice of motion dated 16th October, 2006, the ex parte applicant seeks the following orders:

- (i) That the orders of certiorari be issued removing to this honourable court for purposes of quashing the ex parte decree of the principal magistrate court issued on the 15th May, 2006 in Kikuyu Civil Application Miscellaneous No. 2 of 2006 which decree adopted the findings of the Land Disputes Tribunal.
- (ii) That the orders of prohibition be issued directed at the District Surveyor Kiambu restraining him from visiting the site to determine the boundary at both the complainant and the respondents costs and to put beacons.
- (iii) That the costs hereto be provided for.

2. The application is supported by the following grounds:

- (i) That there is a grave error apparent on the face of records.
- (ii) That the proceedings of the Tribunal have not been concluded and the Tribunal has not become functus officio.
- (iii) That the subordinate court at Kikuyu did not have jurisdiction to entertain the interested party's notice of motion dated 8th March, 2006 ex parte or otherwise.
- (iv) That the Land Disputes Tribunal exceeded its mandate and did not have jurisdiction to grant prayer 2.
- (v) That the decision of the land disputes Tribunal was unreasonable and premised on extraneous matters which were not relevant to the issue placed before it.
- (vi) That the decision of the Tribunal was ultra vires section 3(1) of the Law of Contract Act as amended.

3. The application is further supported by material on record and the statement and the verifying affidavit of the ex parte applicant. The applicant submits that the verifying affidavit has not been controverted as there is no replying affidavit. The applicant further submits that both the Tribunal and the Magistrate's Court had no jurisdiction to invite the District Surveyor into the dispute as it was not prayed for by the interested party. She further states that the interested party who moved the court to adopt the award was not the claimant in the Tribunal. Though the award appears to be in favour of the interested party, the interested party did not move the Tribunal for those orders and thus the Tribunal exceeded its jurisdiction. The applicant further submits that there was no sale agreement as required by section 3(3) of the Law of Contract Act. She points out that the applicant did not raise any objection to the distribution of the property and urges the court to grant the application.

4. The Hon. Attorney General who is appearing for 1st to 3rd respondents filed grounds of opposition objecting to the application on the following grounds:

- (i) The application lacks merit.

- (ii) The issues in question do not fall within the purview of judicial review.
- (iii) The orders sought cannot be granted to the applicants.
- (iv) There exists alternative and efficacious remedy provided for by statute.
- (v) The application offends the provisions of Order LIII Rule 4 of the Civil Procedure Rules.
- (vi) The application offends the provisions of Order LIII Rule 2 of the Civil Procedure Rules.

5. During the hearing of the application, there was no appearance for the Attorney General. Mr. Musyoki who appeared for the interested party, left the matter to the court.

6. I have given due consideration to this application. The facts as stated by the ex parte applicant in her statement of facts and verifying affidavit have not been disputed. On the basis of those facts, I am satisfied that the Land Disputes Tribunal exceeded its jurisdiction as the interested party was not a claimant before it. In the circumstances, the order issued by the Tribunal which is subject of the decree of the lower court issued on 15th May, 2006, in Kikuyu Civil Application Miscellaneous No. 2 of 2006 was issued without jurisdiction.

7. Accordingly, I allow the notice of motion dated 16th October, 2006 and issue orders as prayed in prayer (i) and (ii). The ex parte applicant shall have costs of the application as against the interested party. Orders accordingly.

Dated and delivered this 19th day of November, 2010

H. M. OKWENGU  
JUDGE

In	the	presence	of:	-
Advocate	for	the	ex parte applicant	absent
Ms	Mate	H/B	for the interested	party
Advocate	for	the	respondents	absent
B. Kosgei - Court clerk				