



**Republic v Chief Magistrate’s Court at Thika & another; Njoroge (Exparte);
Ngugi (Interested Party) (Environment and Land Judicial Review Case
9 of 2019) [2023] KEELC 691 (KLR) (9 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 691 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 9 OF 2019
LN MBUGUA, J
FEBRUARY 9, 2023**

BETWEEN

REPUBLIC APPLICANT

AND

CHIEF MAGISTRATE’S COURT AT THIKA 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

SAMUEL MAINA NJOROGE EXPARTE

AND

JANE WANJIKU NGUGI INTERESTED PARTY

JUDGMENT

1. The gist of the dispute herein can be traced to the verdict of the Ruiru Land Dispute Tribunal case no. 25 of 2007 dated 28.10.2008 which declared that the interested party is the rightful owner of the land parcels known as Ruiru/Ruiru East/2/943 and 944 (The suit plots). Apparently, both the Exparte Applicant and the Interested party held respective titles to the suit plots, but in the tribunal award, the Exparte applicant was ordered to surrender his titles for cancellation.
2. The ensuing litigation is aptly captured in the Court of Appeal Judgment Nairobi Civil Appeal No. 58 of 2010 delivered on 22.2.2019. In summary, the tribunal award was adopted as a judgment of the court vide the Decree in Thika Chief Magistrates court case no. D.O.60 OF 2008 on 25.11.2008.
3. Aggrieved by the aforementioned decision, the Exparte Applicant through a Chamber Summons Application dated 4.12.2008 sought leave at the High Court to institute Judicial review proceedings to



quash the decision of the tribunal. His prayers were rejected at the leave stage, prompting him to move to the Court of Appeal in Nairobi Civil Appeal No. 58 of 2010. In a decision delivered on 22.2.2019, the appeal was allowed. The records availed herein (green cards) indicate that by then, the decision of the tribunal had been implemented in terms of registration whereby, the registration of the suit plots in the name of the Exparte Applicant had been cancelled and in his place, the interested party became the registered owner of the said plots.

Case of the Exparte Applicant

4. The Ex-parte Applicant's claim is anchored on the Substantive Notice of Motion dated 11.3.2019, amended and finally re-amended on 22nd February 2021, filed pursuant to the leave granted by the Court of Appeal in Nairobi Civil Appeal No. 50 of 2010; *Samuel Maina Njoroge v Land Dispute Tribunal Ruiru & 2 others*. The Applicant seeks orders that this Hon. Court issues Judicial review orders of certiorari quashing the proceedings of Land Dispute Tribunal Ruiru Case No. 25 of 2007 together with the award issued therein and the judgement in The Chief Magistrate's Court Thika D.O case No.60 of 2008 & its execution thereof.
5. The application is based on grounds on its face and on the Ex parte Applicant's supporting affidavit sworn on 22nd February 2021. He deposes that he is the registered proprietor and the rightful owner of land parcel numbers Ruiru/Ruiru East Block 2/943 and Ruiru/Ruiru East Block 2/994.
6. He further states that in 2007, the Interested Party herein commenced proceedings against him in the Ruiru Land Disputes Tribunal Case No.25 of 2007 seeking that the suit land be transferred to her which orders were granted on 28th October 2008. The award was adopted as an order of the court at Thika Chief Magistrate's Court vide D.O Case No.60 of 2008 on 25th November 2008.
7. He deposes that the land disputes Tribunal Ruiru (now defunct) had no jurisdiction to hear the dispute and acted ultra vires of the *Land Dispute Tribunal Act* (repealed) particularly Section 3 thereof, as it lacked jurisdiction to cancel a title deed. He avers that as a consequence of the said judgement the land parcels in question have already been transferred to the Interested Party.
8. In his submissions dated 18th October 2022, the Exparte Applicant reiterated that the *Land Disputes Tribunal Act* does not grant powers to the District Land Disputes Tribunal to determine issues touching on title to land or cancellation of any transfer documents and /or share certificate. Citing the case of *Owners of Motor Vessel "Lilian S" V Calex Oil (Kenya) Ltd* [1989] I KLR, he submitted that the Tribunal ought to have downed its tools since it had no jurisdiction on the matter. Other authorities relied upon to buttress this point are; *Rose Wambui Wanyoike v Land Dispute Tribunal Kakuzi & another; Mwea Mwathe & another (Interested Parties)* [2019] eKLR, as well as the case of *Caleb Osowo Ogolla v Land Disputes Tribunal Siaya & another; George Solomon Omondi (Interested Party)* [2019] eKLR.
9. The Ex Parte Applicant also submits that his rights under the *Fair Administrative Action Act* subsist even after the repealing of the Land District Tribunal Act by virtue of Section 23 (3) of the *Interpretation and General provisions Act* which provides that the repeal of the *Land Dispute Tribunal Act* did not affect any rights, privileges or obligations acquired, accrued or incurred under it unless a contrary opinion was indicated. He further submits that the defunct Tribunal's functions as per Gazette Notice No.16268 were transferred to the 2nd Respondent and this court has jurisdiction to hear those matters in line with Section 13 of the *Environment and Land Court Act*.
10. He further submits that since the decision of the Tribunal was ultra vires, this court ought not to concern itself with the merits of the decision as once a body has exceeded its powers, the remedy is only one, to quash the said decision. To this end, the ownership issues which the interested Party's



opposition is pegged on can be determined in another forum as this court is only concerned with the decision of the Tribunal. On these points, the Ex parte Applicant relied on the cases of *Municipal Council of Mombasa v Republic & Umoja Consultants Ltd.* Civil Appeal No.185 of 2001 eKLR, *Sanghami Investment Ltd v Officer In Charge Nairobi Remand and Allocation prison* (2007)1 EA and the case of *Stephen Kibowen v Chief Magistrates' court Nakuru & 2others* [2017] eKLR.

Case of the Interested Party

11. The Interested Party opposes the suit vide her Replying Affidavit dated 5.9.2019, as amended on 4.12.2019. She deposes that she is the registered owner of the suit properties which came into her possession upon balloting and being issued with share certificates by Nyakinyua Investments Limited. She further deposes that her titles were issued on 26th August 1994, while the Applicant was issued with his on 23rd July 1996. She argues that the issue of ownership of the subject properties was determined by Ruiru Lands Dispute Tribunal and adopted in Thika Chief Magistrate's Court vide D.O Case No. 60 of 2008 No.25 of 2007, thus she is the conclusive owner as envisaged under Section 26 of the *Land Registration Act* and her proprietary rights are protected under Article 40 of the *Constitution*.
12. The Interested Party filed written submissions dated 9th December 2022, where she contends that the Ex Parte Applicant submitted himself to the jurisdiction of the tribunal in TKA/LDT/25/2007, and he should have filed an appeal to the decision in line with the Procedures set out under Section 8 of the *Land Disputes Tribunal Act* (1990) (Repealed) if he was dissatisfied with the decision.
13. She relied on the case of *Benedict Obat & 3 others v Pius Onyango Obat* [2021] eKLR to submit that Section 23 (3) (e) of the *Interpretation and General Provisions Act* was put in place to preserve and protect decisions made by the defunct Land Disputes Tribunals.
14. The interested Party also submits that the right to property enshrined under Article 40 of the *Constitution* cannot be arbitrarily deprived from a person except under exceptional circumstances provided by the *Constitution* and on the grounds set out at Section 26 (1) of the *Land Registration Act*.

Case of the Respondents

15. The Respondents filed their grounds of opposition on 23rd December 2019 in opposition to the suit where they argue that the entire suit is a claim of ownership of land and that Judicial Review is therefore not a proper forum to determine issues touching on ownership of land.
16. In their submissions dated 26th May 2021, the Respondents contend that while grant of judicial review orders of certiorari is discretionary, the court is entitled to take into account the nature of the process against which judicial review is sought and satisfy itself that there is reasonable basis to justify the orders sought. They reiterated that this is an ownership dispute on the property in question and the court cannot allow itself to be used to solve a land dispute disguised as a judicial review application.

Determination

17. The Ex parte Applicant seeks judicial Review orders of certiorari on the basis that Ruiru Lands Dispute Tribunal exceeded its jurisdiction in Ruiru Land Disputes Tribunal Case No. 25 of 2007 in its award of 28th October 2008 which declared the Interested Party as the rightful owner of the suit properties and cancelled titles issued to him (the Ex parte Applicant). The award was adopted at Thika Chief Magistrate's Court vide D.O Case No.60 of 2008 on 25th November 2008.
18. Section 3 (1) of the *Land Disputes Tribunal Act* (now repealed)



stated as follows;

“Subject to this Act, all cases of a civil nature involving a dispute as 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. Trespass to land, shall be heard and determined by a Tribunal established under section 4”.

19. In *Republic v Chairman Turbo/Uasin Gishu Land Disputes Tribunal & 3 others Ex-Parte Daniel Kipkemei Tenai & another* [2015] eKLR, the court had occasion to consider a similar issue; it stated as follows;

“The dispute presented before the Tribunal in this instance was whether or not the Interested Party was entitled to ownership of one half of the suit land. Clearly, that dispute was neither one of division of land held in common, nor was it a claim to occupy or work land, and neither was it a claim of trespass to land. To me it was a claim for ownership of land by virtue of purchase, which was outside the ambit of the land disputes tribunal. A decision made outside jurisdiction is liable to be quashed by an order of certiorari.”

20. In *Republic v Principal Magistrate Court, Naivasha & 2 Others Ex Parte Racehl Gathoni Waibenya & 3 Others* [2012] eKLR, the court stated as follows;

“.....Certiorari, therefore, will issue to quash a decision made by an inferior court or public authority without jurisdiction or in excess of jurisdiction, or where the body or authority fails to comply with the rules of natural justice.”

21. Going by the material presented before this court, it appears that by the time the two protagonist were appearing before the tribunal, both held respective titles to the suit properties. The applicant has displayed his two titles issued on 23.7.1996, while the interested party has availed hers dated 26.8.1994. It is therefore crystal clear that the dispute related to ownership of the two suit properties, which issue was beyond the jurisdiction of the tribunal.

22. The issue raised by the interested party to the effect that the exparte applicant had subjected himself to the jurisdiction of the tribunal cannot be a subject of contest before this court as that issue was determined in the Court of Appeal case. Further, this being a judicial review matter, the concern of the court is the decision making process and not the merits of the decision; See *Municipal Council of Mombasa v Republic and Another* [2002] eKLR, *Republic v Judicial Service Commission Ex-Parte Pareno* [2004] eKLR.

23. In the case of *Republic v Chairman, Mauche Land Dispute Tribunal & another Ex parte Elisha K. Rotich; Christopher K. Koeh (Interested Party)* [2021] eKLR, the Environment and Land Court was dealing with a similar case whereby, the court had found that both the ex parte applicant and the interested party had respective titles to the suit property and that the Land tribunal had purported to determine the ownership of the suit property in favour of the interested party. The court had this to say of the tribunal;

“Clearly, it did so in excess of its jurisdiction thereby rendering its proceedings and the said decision null and void. As Lord Denning famously stated in *Macfoy vs. United Africa Co.*



Ltd [1961] 3 All ER 1169, a void act is a nullity in law and every proceeding founded on it is incurably defective. It follows therefore that the proceedings before the 2nd respondent in Land Dispute Case No. 5 of 2011 including the adoption of the 1st respondent's award on 10th March 2011 were incurably defective and equally void"

24. Similarly, I find that the award in Ruiru Land Dispute Tribunal Case No. 25 of 2007 together with the subsequent judgement in The Chief Magistrate's Court D.O case No.60 of 2008 & its execution thereof are null and void.
25. The exparte applicant has availed a green card indicating the registration history of the two suit parcels. What is relevant to these proceedings are entries no 5 and 6 whereby the court order in the magistrates case D.O 60 OF 2008 and the registration of the interested party as the owner of the two parcels were noted in the green card on 26.8.2015 and 14.3.2017 respectively. These registrations are however anchored on the void processes and shall be cancelled forthwith.
26. It is noted that the Court of Appeal delivered its verdict in year 2019, long after the implementation of the tribunal award. However, the appeal was lodged way back in year 2010, hence the Respondent ought to have acted cautiously instead of proceeding with the aforementioned registrations.

Conclusion.

27. In the final analysis, I find that this court has jurisdiction under Section 13(7) of the [Environment and Land Court Act](#) to issue prerogative orders. I proceed to give the following orders;
 1. A Judicial review order of certiorari is hereby issued quashing the proceedings of The Land Dispute Tribunal Ruiru Case No. 25 of 2007 together with the award issued therein and the judgement in The Chief Magistrate's Court Thika D.O case No.60 of 2008 & its execution thereof. For avoidance of doubts the entries No. 5 & 6 in the green cards of land parcels Ruiru/Ruiru East /Block 2/943 and 944 are hereby cancelled.
 2. Each party is to bear their own costs of this suit.
 3. The parties are at liberty to seek redress on issue of ownership of land in the proper forum.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 9TH DAY OF FEBRUARY, 2023 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/s Mugo holding brief for Karanja Kanyiri for Exparte Applicant

M/s Wambui holding brief for M/s Wangui for the Interested Party.

Court assistant: Eddel

