



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

JUDICIAL REVIEW APPLICATION NO. 97 OF 2011

IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW FOR ORDERS OF CERTIORARI

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT AND RULES

IN THE MATTER OF NYAMUSI LAND DISPUTES TRIBUNAL

AND

IN THE MATTER OF NYAMIRA SENIOR PRINCIPAL

MAGISTRATE'S COURT LAND CASE NO. 29 OF 2011

AND

IN THE MATTER OF THE LAW REFORM ACT CAP 26, SECTIONS 8 AND 9

BETWEEN

REPUBLIC.....APPLICANT

AND

THE CHAIRMAN, NYAMUSI LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

SENIOR PRINCIPAL MAGISTRATE'S COURT, NYAMIRA.....2ND RESPONDENT

MARY NYANCHAMA MOGENI.....3RD RESPONDENT

EX-PARTE

PRISILA NYABETO.....1ST SUBJECT

JARED NYABETO.....2ND SUBJECT

PAUL NYABETO.....3RD SUBJECT

VICTOR NYABETO.....4TH SUBJECT

KARIRI NYABETO.....5TH SUBJECT

JUDGMENT

INTRODUCTION

1. The Applicants moved the court by way of a Notice of Motion dated 21st November 2011 brought pursuant to order 53 Rule 3(1) of the Civil Procedure Rules seeking the following orders:

a) That this Honourable Court be pleased to issue an order of certiorari removing unto this Honourable Court for purposes of being quashed forthwith, the 2nd Respondent's order dated 13th October 2011 together with all the entire proceedings arising therefrom and/or connected therewith pursuant to the 1st Respondent's award dated 8th September 2011 which was read and adopted as a judgment of the court in Nyamira Senior Principal Magistrate's Court Land Case No. 29 of 2011.

b) That the cost of this application be provided for.

2. The application is premised on the grounds set out in the statement dated 31st October 2011 and the affidavit of Priscilla Bosibori Nyabeto sworn on the 31st October 2011. In the said affidavit the Applicant depones that land parcel number NORTH MUGIRANGO/BOKEIRA/1/1880 is registered in the name of Silvester Nyabeto Mboa - deceased. She further depones that the 3rd Respondent filed a claim in the Nyamira Land Disputes Tribunal whereby the Tribunal unprocedurally reached a finding that $\frac{3}{4}$ of an acre comprised in land parcel number NORTH MUGIRANGO/BOKEIRA/1/1880 be transferred to the 3rd Respondent.

3. She contends that the 3rd Respondent has no claim against the Respondents as the suit property is not registered in the Applicants' names. It is her further contention that the Tribunal had no jurisdiction to deal with matters touching on registered land. She therefore prays that this Honourable Court be pleased to issue an order of certiorari removing unto this court for purposes of being quashed the 2nd Respondent's order dated 13th October 2011 together with the entire proceedings arising therefrom or connected therewith pursuant to the 1st Respondent's award dated 8th September 201, which was read and adopted as judgment of the court in Nyamira Senior Principal Magistrate's court Land Case No.29 of 2011.

4. The application was opposed by the Respondents through the Grounds of Opposition dated 11th May 2012, in which the Respondent stated that the Nyamusi Land Disputes Tribunal acted within its jurisdiction. They also stated that the Applicant has no *locus standi* to institute the instant application. It was their contention that this being a land matter the same ought to be heard and determined on merit without undue regard to technicalities and that the 3rd Respondent stands to suffer irreparable loss if the award of the Tribunal and the Judgment of the Senior Resident Magistrate are quashed.

5. It took a while for the matter to be fixed for hearing as the 3rd Respondent was out of the country and unbeknownst to them; the suit was dismissed for want of prosecution on 22nd March 2017. The Applicant later applied for reinstatement of the suit and the suit was reinstated on 16th July, 2020.

6. The court directed that the application be canvassed by way of written submissions but despite being accorded ample time to file their submissions, none of the parties filed any submissions.

ISSUES FOR DETERMINATION.

7. The following issues fall for determination:

1. Whether the Nyamusi Land Disputes Tribunal had the jurisdiction to issue the award dated 8th September, 2011.
2. Whether the subsequent adoption of Tribunal's award by the Nyamira Senior Magistrate's Court was incompetent and bad in law.
3. Whether the Applicant is entitled to the reliefs sought.

ANALYSIS AND DETERMINATION

8. The first issue for determination is whether the Land Disputes Tribunal had jurisdiction to entertain the dispute between the 3rd Respondent and the Applicants. Section 3 (1) of the Land Disputes Tribunal Act No. 18 of 1990 (repealed) provides as follows:

"All disputes 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"

9. The applicable law at the time the dispute was adjudicated by the Tribunal was Section 159 of the Registered Land Act Cap 300 (repealed)

which provided the jurisdiction to adjudicate upon and settle complaints relating to registered land. The said section provides as follows:

Section 159. " Civil suits and proceedings relating to title to or possession of land or to the title to a lease or charge, registered under this Act or to any interest in land lease or charge being an interest which is registered or registrable under this Act shall be tried by the High Court and where the value of the subject matter in dispute does not exceed twenty thousand ponds, by the Resident magistrate's Court or where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunal Act in accordance with that Act"

10. In the case of **Jonathan Amunavi v Chairman Sabatia Division Land Disputes Tribunal and Enos Kenyani Amunavi, Civil Appeal No. 256 of 2002 at Kisumu** the Court of Appeal held that:-

"It is clear that the proceedings before the Tribunal related to both title and to beneficial interest in the land. Such a dispute is not in our view within the provisions of section 3(1) of the Land Disputes Tribunal Act. By section 159 of the Registered Land Act such disputes can only be tried by the High Court or by the Resident Magistrate's Court in cases where the latter court has jurisdiction".

11. In view of the above-cited decision which is binding on this court it is my finding that in the instant case, the Nyamusi Land Disputes Tribunal had no jurisdiction to entertain the dispute herein as it touched on title to land.

12. The second issue for determination is whether the subsequent adoption of the Tribunal award by the Nyamira Senior Resident Magistrate's court was incompetent and bad in law.

13. Flowing from my findings hereinabove, it follows that the adoption of the Tribunal's award by the 2nd Respondent was a nullity. In **Republic Vs Kajiado North District Ngong Land Disputes Tribunal, Senior Resident Magistrate Kajiado [2014] eKLR** the Court held that:-

"If the said Tribunal had no jurisdiction to entertain the matter, whatever proceedings flowed from its decision would be null and void since decision made by a Tribunal which has no jurisdiction to entertain the dispute before it must of necessity be null and void".

14. It was further stated in the case of **Macfoy vs. United Africa Company Limited** that,

"if an act is void, then it is in law a nullity. 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."

15. The upshot is that I find merit in the application and I grant it and make the following final orders:

a) An order of certiorari is hereby issued removing unto this Honourable Court for purposes of being quashed forthwith and quashing the 2nd Respondent's order dated 13th October 2011 together with all the entire proceedings arising therefrom and/or connected therewith pursuant to the 1st Respondent's award dated 8th September 2011, which was read and adopted as a judgment of the Court in Nyamira Senior Principal Magistrate's Court Land Case No. 29 of 2011.

b) The costs of this application shall be borne by the 3rd Respondent.

DATED, SIGNED AND DELIVERED AT KISII THIS 23RD DAY OF NOVEMBER, 2021.

J.M ONYANGO

JUDGE