



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**JUDICIAL REVIEW APPLICATION NO. 87 OF 2011**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**THE CHAIRMAN,**

**LAND DISPUTES TRIBUNAL (MERU DISTRICT).....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**GERALD MUBICHI MBURUGUA.....INTERESTED PARTY**

**AND**

**ELIAS GITONGA KIBITI.....EX-PARTE APPLICANT**

**JUDGMENT**

**BACKGROUND**

The Ex-parte Applicant vide an Ex-parte Chambers Summons under certificate of urgency dated 9<sup>th</sup> November 2011 sought leave to apply for orders of Judicial Review in the nature of certiorari to bring into this Honourable Court for purposes of quashing the proceedings and award of the Meru Central Land Disputes Tribunal in LDT No. 25 of 2011 dated 16<sup>th</sup> August 2011 as read in the Chief Magistrate's Court in CMCC LDT No. 41 of 2011 on 14<sup>th</sup> October 2011. The Ex-parte Applicant also sought a second prayer that the grant of such leave do operate as stay of execution/implementation of the said award pending the hearing and determination of the substantive Notice of Motion. The Ex-parte Chamber Summons application is supported by statement of facts and verifying affidavit. The verifying affidavit is supported by copies of minutes and proceedings by the Meru Central District Land Disputes Tribunal in LDT No. 25 of 2011 held on 14<sup>th</sup> August 2011.

When the said application was placed before the duty Judge for directions, the same was certified urgent and the Ex-parte Applicant granted leave to apply for orders of Judicial Review in the nature of certiorari to bring into this Honourable Court for purposes of quashing the proceedings and award of the Meru Central Land Disputes Tribunal in LDT No. 25 of 2011 as read in the CMCC No. 41 of 2011 on 14<sup>th</sup> October 2011. The grant of such leave do operate as a stay of execution of the said award pending the hearing and determination of the substantive Notice of Motion within 21 days.

On 9<sup>th</sup> December 2011, the Ex-parte Applicant filed his substantive Notice of Motion. On 24<sup>th</sup> April 2017, the Interested party filed a replying affidavit opposing the Notice of Motion. In a Notice of Motion dated 15<sup>th</sup> February 2018, one Elias Gitonga Kibiti Sought leave of the Court to be

substituted as an Ex-parte Applicant in place of Arachi Kaburugua who passed away on 3<sup>rd</sup> March 2017. On 5<sup>th</sup> March 2018, the Ex-parte Applicant filed an amended Notice of Motion pursuant to the leave of the Court. On 17<sup>th</sup> April 2018, the Interested party Gerald Mubichi Mburugua filed a replying affidavit also opposing the same. When this case came up for directions on 29<sup>th</sup> May 2019, the parties agreed to canvass the Notice of Motion by written submissions with all parties being granted timelines within which to file and serve their respective submissions. Despite those directions being given, none of the parties complied.

## EX-PARTE APPLICANT'S CASE

The Ex-parte Applicant contends that he has all along been the sole registered owner of all that parcel of land known as L.R. No. NYAKI/GIAKI/105 comprising approximately 6.2 Ha. or thereabouts. He stated that the interested party herein lodged a claim with the Meru Central Land Disputes Tribunal in LDT No. 25 of 2011 in which he claimed purchaser's interest in L.R. No. NYAKI/GIAKI/KIBURINE/105. In particular, the Interested party stated that the Ex-parte Applicant agreed to sell to him a portion of land measuring two (2) acres from the suit land. He stated that based on that claim, the Land Disputes Tribunal proceeded to entertain and hear the matter and subsequently, ordered that the Applicant do give two (2) acres from L.R. No. NYAKI/GIAKA/KIBURINE/105 to the Interested party. That award of the Tribunal was read and adopted before the Chief Magistrate's Court at Meru in LDT No. 41 of 2011 on 14<sup>th</sup> October 2011. According to him, the Land Disputes Tribunal lacked the requisite jurisdiction to entertain and hear the dispute presented before it for lack of jurisdiction and time barred under the Law of Limitation. In conclusion, the Applicant stated that since the Tribunal lacked the requisite jurisdiction to entertain the matter before it, then the award is ultra vires and all subsequent proceedings, awards and orders made were a nullity in law and of no legal effect.

## INTERESTED PARTY'S CASE

The Interested party opposed the application stating that on 11<sup>th</sup> March 1981, the Applicant sold to him two (2) acres of his land L.R. No. NYAKI/GIAKI/105 for Ksh. 7,000/= and finished paying the purchase price on 26<sup>th</sup> January 1983. He stated that immediately he paid the Applicant the initial instalment of Ksh. 3,500/=, he allowed him to occupy 2 acres where he moved with his family and constructed two houses. He stated that he developed the parcel of land by fencing round the two acres and continued living with his family.

On 5<sup>th</sup> November 1995, he was attacked by unknown assailants and he sustained injuries and was admitted in hospital for two weeks. While he was in hospital, his family was evicted from the suit land by the Applicant. After he was discharged from hospital, he reported to their area Chief who gave him a letter and cautioned the Applicant's land. Sometime in 2011 or thereabouts, he lodged a claim for the two (2) acres before the Central Land Disputes Tribunal and on 16<sup>th</sup> August 2011, the said Tribunal upheld his claim and filed their decision in Meru CMCC LDT No. 41 of 2011 and on 14<sup>th</sup> October 2011, the Court adopted LDT No. 41 of 2011 as a judgment of the Court. The Interested party argued that the Applicant did not raise the question of jurisdiction before the Land Disputes Tribunal but submitted himself before the said Land Disputes Tribunal arguing that he had rented him the two (2) acres and not sold him as alleged.

## ANALYSIS AND DECISION

I have considered the affidavit evidence and the submissions by counsels for the parties. I have also considered the applicable law. The impugned decision which is the subject of these Judicial Review proceedings is an award by the Meru Central Land Disputes Tribunal in LDT No. 25 of 2011 dated 16<sup>th</sup> August 2011. The said award was issued pursuant to the Land Disputes Tribunal No. 18 of 1990 (repealed). The Applicant is challenging the said award on one single ground that the Tribunal purported to adjudicate over the claim of sale of land notwithstanding that they were not seized of such jurisdiction. The issue on jurisdiction has been dealt with through previous decisions from the Superior Courts (precedents). In the celebrated case of **OWNERS OF MOTOR VESSEL "LILLIANS" VS CALTEX OIL KENYA LIMITED (1989) K.L.R.**, the Court of Appeal held as follows:

***"Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction".***

**Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990 (repealed)** reads as follows:

***"Subject to this Act, all cases of civil nature involving a dispute as to:***

***(a) The division of, or the determination of boundaries of land, including land held in common;***

***(b) A claim to occupy or work land; or***

***(c) trespass to land".***

The dispute before the Tribunal as can be seen from the proceedings was for the sale of land measuring 2 acres. The sale of land was not one of the mandates of the Tribunal according to the **Land Disputes Tribunal Act (now repealed)**. The Tribunal in my view went outside their jurisdiction by purporting to determine the sale of land. In the case of **Dominica Wamuyu Kihu Vs Johana Ndura Wakaritu (2012) e K.L.R.**, the Court of Appeal at Nyeri held as follows:

***"On jurisdiction, Section 3 (1) of the Land Disputes Tribunal Act is quite clear as to the matters the tribunals under the Act were authorized to adjudicate on ..... This provision clearly puts disputes relating to ownership or title to land beyond the Tribunal's jurisdiction. In this case, the dispute is on ownership of title No. Magulu/Gathehu/53. That was a dispute outside the jurisdiction of the Tribunal".***

I agree entirely with the decision by the superior Court. From the foregoing, it is clear that the Tribunal's proceedings dated 16<sup>th</sup> May 2011 were ultra vires and its decision null and void for all intents and purposes. Consequently, I find this application meritorious and allow the same as prayed. Given the period these proceedings have taken, I order each party to bear her own costs.

*DATED and SIGNED in open Court at Kerugoya this 7<sup>th</sup> day of February, 2020.*

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**E.C. CHERONO**

**ELC JUDGE, KERUGOYA**

*READ, DELIVERED and SIGNED in open Court at Meru this 10<sup>th</sup> day of February, 2020.*

.....

**L.N. MBUGUA**

**ELC JUDGE, MERU**

*In the presence of:*