



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAKURU**

**JUDICIAL REVIEW NO 52 OF 2012**

**REPUBLIC .....APPLICANT**

**VERSUS**

**OL-JOROROK DIVISION LAND**

**DISPUTE TRIBUNAL & OTHERS.....RESPONDENT**

**RULING**

Pursuant to leave granted on 17<sup>th</sup> August 2012, to commence Judicial review proceedings, the exparte Applicant filed a notice of motion dated 28<sup>th</sup> August 2012 seeking the following order: That an order of certiorari do issue to remove to this court and quash the decree given on 14<sup>th</sup> June, 2012 in Nyahururu Principal Magistrate court Land Disputes case No.5 of 2011, adopting the award of OL'JORO-ROK Division Land Disputes tribunal case no.006 OF 2006.

The application is premised on the grounds that the Land Disputes tribunal:

- a. Had no jurisdiction to entertain a claim of ownership or title to registered land under the repealed Registered Land Act, cap 300 Laws of Kenya.
- b. Entertained a claim which it had no jurisdiction to entertain under section 3(1) of repealed land Disputes tribunal Act no. 8 of 1990.
- c. Granted an award that is a nullity in Law and could not be adopted as judgment of a court of Law. That the subordinate court acted without or in excess of jurisdiction by adopting it and the two had no jurisdiction to make orders under section 143 and 159 of the repealed Land Act, Cap 300 Laws of Kenya
- d. Was improperly constituted since under the repealed land disputes tribunal Act, only a District tribunal could hear and determine disputes under the Act.
- e. Flouted the cardinal rules of natural justice for failure to serve the applicant with notice of the claim thereby denying him a hearing and condemning him unheard.
- f. That the interested party had no *Locus standi* to institute proceedings in defence of alleged public rights over the suit land and that the proceedings were a nullity.

In support of the application, Ahmed Abdullahi swore an affidavit on 15<sup>th</sup> August 2012 where he depones that he is the registered proprietor of Nyandarua/OL'Jororok Salient/1886 (here after referred to as the suit land) measuring 1.0 hectares acquired from the settlement fund trustees: That the interested party instituted a claim at the Ol'Joro-Orok Division land disputes tribunal on behalf of Rami self help group claiming the suit land belonged to the community: That although the applicant was not served with the claim documents an award was granted as follows:

1. That the suit land belonged to the area community including Rami self help group
2. The court to nullify this illegal acquisition by cancelling the title deed held by Ahmed- M Abdullahi and revert ownership to the Government land trustee.

The Nyahururu Principal Magistrates Court adopted the award as judgment of the court and issued a decree on 17<sup>th</sup> July 2012 which is the subject of challenge in this judicial review.

The application was not opposed.

When the matter came up for hearing before me on 19<sup>th</sup> April 2013, counsel for the respondents stated that the Land Disputes tribunal had exceeded its jurisdiction and therefore the application should be allowed.

The interested party did not enter appearance.

The remedy of judicial review is concerned not with the private rights or merits of the decision being challenged but with the decision making process. Its purposes is to ensure that the individual is given fair treatment by the authority to which he has been subjected. See **Republic V Secretary of state for Education and Science (Exparte) Avon County Council (1991) I ALL ER 282 at 285**. The point is more succinctly made in the English case of **chief constable of North Wales Police Vs Evan (1982) I W.L.R 1155, by Lord Hailsham of St Marlebone**.

Thus:

**“the purpose of judicial review is to ensure that the individual receives fair treatment, and not to ensure that the authority after according fair treatment, reaches on a matter which it is authorized by law to decide for itself a conclusion which is correct in the eyes of the court”**

Therefore, a decision of an inferior court or public authority may be quashed (by an order of certiorari made on application of Judicial review) where the court or authority acted without jurisdiction, or exceeded its jurisdiction, or failed to comply with the rules of natural justice in a case where these rules are applicable, or where there is an error of law on the face of the record or the decision is unreasonable in the Halsbury sense.

In this case, the claimant moved to the tribunal seeking a declaration for cancellation of title. The tribunal granted an award stating that the title deed held by Ahmed M Abdullahi should be cancelled and ownership revert back to the Government land trustee. It is evident that the OL'JORO-OROK Division Land Disputes tribunal did not have jurisdiction to hear and determine a dispute relating to cancellation of title. The mandate of the tribunal as provided for under section 3(i) of the repealed Land Disputes tribunal Act no. 18 of 1990 was limited to hearing civil cases in the following areas:

- a) **The division of or the determination of boundaries of land, including and held in common:**
- b) **claim to occupy or work land, or**
- c) **trespass to land**

Secondly, was the tribunal properly constituted to hear the dispute?

Section 4(1) of the repealed land disputes Tribunal Act no.18 of 1990 is clear about the constitution of the tribunal.

4(1)“ There shall be established a tribunal, to be called the lands disputes tribunal, for every registration district- ( Emphasis mine). OL'Jororok is not a registered district. The registered district for

that area (before the repealed Act) was Nyandarua. I hold that the Divisional tribunal lacked jurisdiction.

Thirdly, did the failure to serve the applicant with the notice flout the cardinal rule of natural justice? my answer is in the affirmative.

Section 3(4) of the same Act requires that “ every claim shall be served on the party or where there are more than one, on each of the other parties to the dispute and the provisions of the Civil Procedure Act as regards summonses shall thereafter apply”

Since no evidence has been adduced to the contrary I shall take it that there was no service. Service is mandatory and this definitely flouts the cardinal rule of natural justice.

Finally it is alleged that the interested party had no Locus to institute proceedings in defense of alleged public right over the suit land. I do not agree. Article 40 (3)(b)(ii) subject to Article 65 of the Constitution allows any person who has an interest in or right over a property which is of a public nature or of a public purpose the right of access to a court of law. I find that the claimant had *locus standi* to institute this claim.

The upshot of the foregoing is that the tribunal exceeded its mandate. I will allow this application for judicial review on the following terms:

The award of the OL’ JORO-OROK Divisional land Disputes tribunal case No. 006 I 2006 and the decree adopting the award are set aside.

No order is made on costs as the claimant/interested party did not enter appearance.

**Dated, signed and delivered in open Court at Nakuru this 5<sup>th</sup> day of July 2013.**

**L N WAITHAKA**

**JUDGE**

**Present**

**Mr Chege for the applicants**

**Mr Njuguna for respondents**

**Stephen Mwangi: court Clerk**

**L N WAITHAKA**

**JUDGE**