



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**JUDICIAL REVIEW NO. 33 OF 2011**

**MARIGU FARMERS CO. LTD.....APPLICANT**

**VERSUS**

**RIFT VALLEY PROVINCIAL LAND DISPUTE**

**APPEAL COMMITTEE.....1<sup>ST</sup> RESPONDENT**

**THE CHIEF MAGISTRATE'S COURT NAKURU.....2<sup>ND</sup> RESPONDENT**

**PAUL MACHARIA CHEFE.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

***(Judicial Review Motion to quash an award of the Appeals Committee of the Land Disputes Tribunal; dispute being one over title and ownership of land; application allowed).***

1. This is a judicial review motion seeking orders of certiorari to quash the decision of the Rift Valley Provincial Land Dispute Appeals Committee in Case No. 68 of 2009 and delivered on 6 December 2010 which decision upheld that of the Bahati Land Disputes Tribunal in Case No. 156 of 2009. The applicant also seeks orders of prohibition to prohibit the implementation of the said ruling of the Land Disputes Tribunal and Appeals Committee. The main ground upon which the applicant seeks these orders is that the Land Disputes Tribunal and the Appeals Committee acted in excess of their jurisdiction.

2. The dispute before the Bahati Land Disputes Tribunal was lodged by the 3<sup>rd</sup> respondent. He claimed to have been a member of the ex-parte applicant, which seems to be a land buying company, and that he was entitled to a Plot No. 86 whereas his father in law, one Harun Njoroge, the Plot No. 87. He claimed that in the year 1981, his father in law transferred his plot No. 87 to him and the two were consolidated to become land measuring 2 1/2 acres. In the year 1995/1996, there was re-allocation of land which led him to retaining the plot No. 86, but the Plot No. 87 was split into two equal portions out of which he got the plot No. 291 and the other half of the said plot went to one Nancy Nyambura. The Tribunal after hearing the dispute held that the 3<sup>rd</sup> respondent should be given 2 acres of land and that his plots should not be split. Aggrieved by this decision, the ex-parte applicant appealed to the Rift Valley Land Disputes Appeals Committee through Appeal No. 68 of 2009. The appeal was dismissed and it does appear that the award was adopted by the Chief Magistrates Court at Nakuru, in Land Dispute Case No. 43 of 2009 and a decree was issued in the year 2011.

3. The State Law Office, entered appearance on behalf of the 1<sup>st</sup> and 2<sup>nd</sup> respondents but other than that, they filed no response to the motion and filed no submissions either in support or in defence of the award. The 3<sup>rd</sup> respondent however filed a replying affidavit where he inter alia repeated his claim as presented at the Tribunal and contended that this was a case of trespass where the directors of the ex-parte applicant were attempting to give part of his land to a third party. He was of the view that the decisions of the Tribunal and Appeals Committee were correct.

4. In his submissions, Mr. Kahigah, learned counsel for the ex-parte applicant, inter alia pointed me to Section 3 of the Land Disputes Tribunal Act, and argued that the decision of the Tribunal was made out of jurisdiction. He submitted that the issue was whether the 3<sup>rd</sup> respondent was entitled to the Plots No. 86, 291 and 87 and that in the award, the Tribunal held that the 3<sup>rd</sup> respondent should be given 2 acres of land. It was his view that this was a determination that the land was of the 3<sup>rd</sup> respondent and not a determination of the right to occupy, and this was out of the jurisdiction of the Tribunal. He submitted that the Tribunal had no powers to determine issues affecting title and thus its decision is null and void.

5. On the other hand, Ms. Njoroge for the 3<sup>rd</sup> respondent, inter alia submitted that the claim before the Tribunal was one of occupation of land. She submitted that the transplanting of one Nancy Nyambura so as to give her a share of the land owned by her client was a claim by the said Nancy to occupy land. Her view was that this was not a dispute over land ownership and thus the Tribunal had jurisdiction.

6. I have considered the matter and the rival submissions. It is the contention of the ex-parte applicant that the Tribunal had no jurisdiction over the matter. The jurisdiction of the Land Disputes Tribunal was provided for in Section 3 of the Land Disputes Tribunal Act, Cap 303A (now repealed by the Environment and Land Court Act, 2011), which was drawn as follows :-

3. (1) 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.(2) Every dispute referred to in subsection (1) shall be instituted by presenting a claim to the Tribunal for the area in which the land is situated, and shall contain, and contain only, a summary of the material facts on

7. It will be seen from the above provision that the jurisdiction of the Land Disputes Tribunal was restricted to issues relating to the division of land or the determination of boundaries to land; a claim to occupy or work land; or trespass to land. It is apparent therefore that the Land Disputes Tribunal did not have jurisdiction to determine issues relating to ownership of title to land.

8. In our instance, what appears to have transpired is that one of the plots claimed by the 3<sup>rd</sup> respondent was subdivided and a new plot created which plot was then allocated to a third party. In his suit before the Tribunal, the 3<sup>rd</sup> respondent was clearly asking for a cancellation of this title so that his land can revert back to the land parcels No. 86 and 87. That to me does not appear to be a case of trespass or a claim to occupy land. That is a claim over title to land. Indeed, what the ex-parte applicant wanted was to have his land intact as it was before the proposed subdivision. This to me was a case where one is claiming ownership of land from another.

9. I am thus persuaded that the Tribunal embarked to hear a matter in which it had no jurisdiction. It is trite law that any decision made outside jurisdiction is null and void and liable to be set aside.

10. In these proceedings, the ex-parte applicant wants orders of certiorari to quash the said award and the decision of the Appeals Committee. I have no reason to deny the ex-parte applicant these orders. The effect is to render worthless the decree that was passed and in my discretion, I further proceed to quash the said decree. I also grant the order prohibiting the execution of the said decree.

11. In essence this motion is thus allowed.

12. On costs, it is the 3<sup>rd</sup> respondent who presented a claim before the wrong forum. He will shoulder the costs of this suit.

12. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 15th day of February 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :-**

No appearance on the part of M/s Mirugi Kariuki & Co. for the applicant.

No appearance on the part of the respondents.

Court Assistant : Nelima Jenipher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**