



**REPUBLIC OF KENYA**

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

**ELC JUDICIAL REVIEW NO.15 OF 2017**

**IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF: LAND DISPUTES TRIBUNAL KAKUZI AWARD IN RESPECT  
OF LAND PARCEL LR.KAKUZI/KIRIMIRI/BLOCK 9/740**

**AND**

**IN THE MATTER OF: THE CHIEF MAGISTRATES COURT AT THIKA L.D.T/DO.**

**CASE NO.67 OF 2011**

**AND**

**IN THE MATTER OF: LAND DISPUTE TRIBUNAL ACT NO.18/90**

**IN THE MATTER OF: THE REGISTERED LAND ACT CAP 300 LAWS OF KENYA**

**BETWEEN**

**ROSE WAMBUI WANYOIKE.....EX-PARTE APPLICANT**

**VERSUS**

**LAND DISPUTE TRIBUNAL KAKUZI.....1<sup>ST</sup> RESPONDENT**

**CHIEF MAGISTRATES COURT AT THIKA.....2<sup>ND</sup> RESPONDENT**

**AND**

**MWEA MWATHE.....1<sup>ST</sup> INTERESTED PARTY**

**SASIDA MUTHONI.....2<sup>ND</sup> INTERESTED PARTY**

**JUDGMENT**

Pursuant to the *Leave* granted by the Court on *18<sup>th</sup> October 2011*, to the Applicant herein to apply for an *Order of Certiorari and Prohibition*, the Ex-parte Applicant filed a *Notice of Motion* dated *26<sup>th</sup> October 2011*, and sought for the following orders:-

*1) For an order of Prohibition prohibiting the Chief Magistrates Court at Thika from hearing or entertaining any further proceedings or issuing any further orders in LTD Case No.67 of 2011 Thika, and Kakuzi Land Disputes Tribunal from entertaining similar proceedings affecting title to land and ownership of LR.Kakuzi/*

*Kirimiri/Block 9/740.*

2) *An Order of Certiorari to bring to High Court and quash proceedings and award of the Kakuzi Land Disputes Tribunal in respect of LR.Kakuzi/Kirimiri/Block 9/740 or the award in LDT Case No.67 of 2011 at Thika by K. W. Cheruiyot (DM II) on 3<sup>rd</sup> October 2011.*

3) *Cost of this application be provided for.*

The application was supported by the ground stated on the **Statutory Statement** of the Ex-parte Applicant **Rose Wambui Wanyoike**, dated **14<sup>th</sup> October 2011** and these grounds are:-

- a) *That the Applicant herein is the registered proprietor of that parcel of land known as LR.Kakuzi/Kirimiri/Block 9/740, which land she holds to the exclusion of all other persons as per the provisions of the law.*
- b) *That the Interested Parties herein obtained an award which by itself is irregular, unprocedural and or illegal, since the Tribunal has no jurisdiction to entertain, hear or make Ruling or Award on issues pertaining to title to land and/or ownership.*
- c) *That the Kakuzi Land Disputes Tribunal Award was prejudicial to the Applicant's sole interests in respect of LR.No.Kakuzi/Kirimiri/Block 9/740.*
- d) *That the Kakuzi Land Disputes Tribunal erred in determining this matter as it had no jurisdiction to do so.*

In her **Affidavit in Verification** of the statement, the Ex-parte Applicant averred that she filed a Land Dispute at **Kakuzi Land Disputes Tribunal** between herself and the Interested Parties which case was referred to as **LDT No.22/011/7, Kakuzi Land Disputes Tribunal**. Further, that the said **Land Disputes Tribunal**, ordered on **2<sup>nd</sup> September 2011**, that the Interested Parties herein do take and partition her land **LR.Kakuzi/Kirimiri/Block 9/740**, in equal share. The said decision was attached as **RW-2**. It was her contention that all the documents indicate that she is the registered owner of the subject land parcel **LR.Kakuzi/Kirimiri/Block 9/740**, and therefore the said Ruling was a miscarriage of justice as the said tribunal did not have jurisdiction to hear matters of ownership and title. She also contended that the said tribunal's Ruling and/or award was read in the **Chief Magistrates Court** on **3<sup>rd</sup> October 2011** as **LDT No.67 of 2011** as per **RW-3**. It was her further contention that her advocate has advised her that the said Tribunal had no jurisdiction to entertain and/or determine issues touching on title to land and ownership of land and therefore the Tribunal erred in ordering that she surrenders **LR.No.Kakuzi/Kirimiri/Block 9/740**, to the Interested Parties.

Further, that she has been advised by her Counsel that the Interested Parties have no *locus standi* to claim her parcel of land as the two are strangers. It was her further contention that she acquired the subject title legally in the **year 2002**, having been a member and/or beneficiary of **Kakuzi East Settlement Scheme** and that she has been utilizing and tilting the subject parcel as the registered proprietor and/or owner.

She also contended that she is aggrieved by the said Tribunal's award as it is prejudicial to her exclusive proprietary interest and/or rights in respect of **LR.No.Kakuzi/Kirimiri/Block 9/740**. She urged the Court to grant her an **Order of Certiorari** to quash the said decision of the Tribunal and prohibit the enforcement of the Ruling made by the **Thika Chief Magistrates Court** in adopting the said award of the Tribunal.

Though the **Notice of Motion** was served upon the Respondents and the Interested Parties, none of them entered appearance nor filed any response to the Ex-parte Applicant's **Notice of Motion** application. The application is therefore unopposed.

The Ex-parte Applicant filed her submissions on **31<sup>st</sup> July 2018**, and urged the Court to allow her application. It was submitted that **Kakuzi Land Disputes Tribunal** did not have jurisdiction to hear and entertain and/or make a Ruling and/or award on matters touching on ownership or otherwise Ruling that a party should surrender his land to another.

The Applicant relied on the provisions of the **Land Disputes Tribunal Act, of 1990** specifically **Section 3(1)** which states:-

**“The jurisdiction of the Land Dispute Tribunals are:-**

- a) *To determine boundaries to the land held in common.*
- b) *Claim to occupy or work on land and finally;*
- c) *Trespass to land.*

It was her further submission that the **Land Disputes Tribunal Act** does not grant powers to the **District Land Disputes Tribunal** to determine issues touching on title to land ownership or cancellation of any transfer documents and/or Share Certificate.

She relied on the case of **Gibson Sengete Matolo...Vs...Eastern Provincial Land Disputes Committee & 3 Others, HCC Misc.Appl No.33 of 2003**, where the Court held that:-

**“District Tribunals or even Land Disputes Appeals Committee have no powers to entertain matters touching on ownership and title to land.”**

Further, Applicant relied on the case of **“In the matter of Asman Maloba Wepukhulu & Another...Vs...Francis Wakwabubi, Kisumu Court of Appeal No.157 of 2001**, where the Court held that:-

**“Where a title to land has been unlawfully interfered with by bodies which lacked jurisdiction, such an award or any subsequent order emanating from and/or pursuant to the illegal award is also illegal and should be quashed”.**

The Applicant urged the Court to allow her **Notice of Motion**.

Though the application is not opposed, the Court finds that **the issue for determination is whether the application is merited?**

In the case of **OJSC Power Machines Ltd, Trans Century Ltd and Civicon Ltd (Consortium)...Vs...Public Procurement Administrative Review Board, Kenya & 2 Others, NRB CA 28 of 2016 (2017) eKLR**, the Court of Appeal held that:-

**“The purpose of Judicial Review is to ensure that a party receives fair treatment in the hands of public bodies; that is the purpose of Judicial Review to ensure that public body after according fair treatment to a party reacts on a matter which it is authorized by law to decide on itself, a conclusion which is correct in the eyes of the court in the Judicial Review proceedings....**

**Judicial Review is concerned with the decision making process, not with the merits of the decision itself”.**

The Ex-parte Applicant has sought for **Orders of Certiorari and Prohibition**. These are public law remedies available to persons who legally recognized interest have been infringed by public bodies or offices exercising such **Statutory** powers. **Halsbury’s Laws of England, 4<sup>th</sup> Edition at Para 46** states as follows:-

**“The courts have inherent jurisdiction to review the exercise by public bodies or offices of Statutory powers impinging on legally recognized interest. Powers must not be exceeded or abused.”**

Further in the case of **Kenya National Examination Council...Vs...R, Exparte Geoffrey Gathenji Njoroge & 9 Others (1997) eKLR**, the Court did set out the scope of the remedies of **Certiorari, Mandamus** and **prohibition** as follows:-

**“Prohibition is an order from the High Court directed to an inferior tribunal or body which prohibits that tribunal or body to continue proceedings in excess of its jurisdiction in contravention of the law of the land. Only an Order of Certiorari can quash a decision already made and an Order of Certiorari will issue if the decision is made without or in excess of jurisdiction or where the rules of natural justice are not complied with or for such like reasons....”**

It is not in doubt that the ex-parte Applicant had a land dispute over **LR.No.Kakuzi/Kirimiri/Block 9/740**. The Applicant is a title holder of this **Kakuzi/Kirimiri/Block 9/740**, as can be discerned from her title deed attached to the proceedings. The said title was issued to her on **10<sup>th</sup> April 2002**. Further, it is evident that the **Kakuzi District Land Disputes Tribunal**, did arbitrate the matter which related to title of a registered land and in its findings, it held that the suit land **Kakuzi/Kirimiri/Block 9/740**, was allocated to the Interested Parties and that the same should be partitioned equally between the Interested Parties. After the said Ruling by the **District Land Disputes Tribunal**, the award was read in court by the **Thika Chief Magistrate’s Court**, and the said award was to be confirmed on **7<sup>th</sup> November 2011**. However, the Applicant obtained Stay Orders before the confirmation was done. However, the proceedings of **DO Case NO.67 of 2011** are still pending before **Thika Chief Magistrate’s Court**.

It is evident that jurisdiction is everything. See the case of **Owners of Motor Vessel ‘Lilian S’...Vs...Caltex Oil (Kenya) LTD (1989) 1 KLR**,

where the Court held that:-

**“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 at the moment it holds the opinion that it is without Jurisdiction”.**

The **Land Disputes Tribunal Act, of 1990** sets out the jurisdiction of the **Land Disputes Tribunals**. It is evident that disputes over registered land do not fall under the jurisdiction of the **District Land Disputes Tribunal**. In this case, the **Kakuzi District Land Disputes Tribunal** heard and determined questions of ownership of registered land which had a title deed. The said **Kakuzi District Land Disputes Tribunal** did not have jurisdiction to entertain such dispute and therefore the said Land Disputes Tribunal exceeded its jurisdiction.

Since the **Kakuzi District Land Disputes Tribunal** had no jurisdiction to determine disputes relating to ownership of registered land, then

whatever award they made was **null** and **void** for **want of jurisdiction**. Since the award of the Tribunal was **null** and **void**, the **Thika Chief Magistrate's Court** had no jurisdiction to read and confirm an award that was null and void. Therefore, this Court finds that the decision of **Kakuzi Land Disputes Tribunal** in **LDT No.22/011/7** was *ultra vires* as the said Tribunal had no jurisdiction to interfere with a title of property.

Having now carefully considered the **Notice of Motion** application dated **26<sup>th</sup> October 2011** and the annexures thereto and the other pleadings in general, the written submissions and the relevant provisions of law, the Court finds the said application merited and it is allowed entirely in terms of prayers No.1 & 2 with costs to the Ex-parte Applicant.

It is so ordered.

**Dated, Signed and Delivered at Thika this 5<sup>th</sup> day of April 2019.**

**L. GACHERU**

**JUDGE**

In the presence of

Mr. Kiptoo holding brief for Mr. Mugo for Ex-parte Applicant

No appearance for 1<sup>st</sup> Respondent

No appearance for 2<sup>nd</sup> Respondent

No appearance for 1<sup>st</sup> Interested Party

No appearance for 2<sup>nd</sup> Interested Party

Lucy - Court Assistant

**Court** – Judgment read in open court in the presence of the above stated advocate and absence of the other parties.

**L. GACHERU**

**JUDGE**