



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. APPLICATION (JR) NO.25 OF 2017

(FORMERLY JR NO. 61 OF 2011)

IN THE MATTER OF AN APPLICATION BY SOLOMON MATUMBI ISIAIAH FOR THE JUDICIAL REVIEW ORDER FOR CERTIORARI

AND

IN THE MATTER OF MERU CHIEF MAGISTRATES COURT LDT NO. 33 OF 2011

AND

IN THE MATTER OF THE DECISION OF THE MERU CENTRAL DISTRICT LAND DISPUTES TRIBUNAL IN CASE NO 46 OF 2010

AND

IN THE MATTER OF THE LAND DISPUTES TRIBUNAL ACT NO 18 OF 1990

AND

IN THE MATTER OF REGISTERED LAND ACT CAP 300 LAWS OF KENYA AND THE LAW REFORM ACT, CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF LAND REFERENCE, NO NTIMA/NTAKIRA/2958

REPUBLIC.....APPLICANT

VS

THE CHAIRMAN MERU CENTRAL DISTRICT

LAND DISPUTE TRIBUNAL.....RESPONDENT

AND

ANTONY KIRIMI.....INTERESTED PARTY

EXPARTE APPLICANT.....SOLOMON MATUMBI ISIAIAH

JUDGMENT

1. On 7.9.2011, the Exparte Applicant was granted leave to file Judicial Review proceedings seeking orders of certiorari to quash the award dated 22.6.2011 made Meru Land Disputes Tribunal in LDT No 46 of 2010 which was read in Meru CMCC LDT No 33 of 2010 on 19.7.2011. The leave granted did operate as a stay of execution of the decision aforesaid.

2. The substantive Notice of Motion was filed on 14.9.2011. The grounds in support thereof are that; The Exparte Applicant is the registered

owner of land parcel No Ntima/Ntakira/2958; That the Tribunal heard and determined a claim in title in land and proceeded to make an award disentitling the exparte Applicant 0.5 acres of the suit land; That the Tribunal awarded the wife and the children of the exparte Applicants a portion of 1.5 acres of the suit land; That the Tribunal did not have power under the law to determine the claim and make an award; The suit land is registered under the Registration of Land Act, Cap 300 (repealed)

3. The Interested Party opposed the application through a replying affidavit filed on the 14.12.2016. He contends that the Exparte Applicant is his biological father and has refused to transfer part of the land out of the suit land to him. That the suit land is ancestral land. That according to him there is no good reason to stay the execution of the decree in LDT 33 of 2011.

4. Parties agreed to canvass the application by way of written submissions which I have carefully considered.

5. The single issue before this Court for determination is whether the Tribunal had powers to determine the claim in interest and or title in the suit land. Whether the judicial review application is properly before this Court.

6. The jurisdiction to hear and determine disputes by the Land Disputes Tribunals was donated by the Land Disputes Tribunal Act, 1990 (now repealed) under section 3 which states as follows;

“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”.

7. It is on record that the Land Dispute Tribunal in its award adopted as an order of the Court on 25.8.2011 states as follows;

“That the claimant Anthony Kirimi I.D No 12406678 be given half of an acre of the suit land Ntima/Ntakira/2958 by his father Solomon Matumbi Isaiah.

That the balance of the suit land will be for Solomon Matumbi Isaiah his wife Eunice Muthoni and Matumbi’s other children.”

Clearly the Tribunal dealt with matters relating to title which is outside its jurisdiction.

8. It is trite law that a Court’s jurisdiction flows from the Constitution or legislation or both. A Court of law (Tribunal) can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law. By determining a matter that it had no jurisdiction, the Tribunal acted ultra vires and therefore the decision it reached is a nullity in law. See the case of **Samuel Kamau Macharia & Another Vs Kenya Commercial Bank & 2 others (2012) ECLR**

9. In the case of **Jonathan Amunavi Vs. The Chairman Sabatia Division Lands Dispute Tribunal & Another, Kisumu Civil Appeal No. 256 of 2002**(unreported) the Court observed that the land dispute tribunal acted in excess of jurisdiction when it purported to revoke the Plaintiff’s title to the suit property. It went ahead to affirm that such power was reserved for the High Court vide Section 159 of the Registered Land Act Cap 300 Laws of Kenya (now repealed).

10. In the case of **Sir Ali Bin Salim –vs- Shariff Mohamed Shatry Civil Appeal No. 29 of 1940** the East African Court of Appeal stated,

“if a Court has no jurisdiction over the subject matter of the litigation its judgements and orders however precisely certain and technically correct are mere nullities and not only voidable; they are void and have no effect either as estoppel or otherwise and may not only be set aside at any time by the Court in which they were rendered but be declared void by every Court in which they may be presented. It is well established in law that jurisdiction cannot be conferred on a suit by consent of parties and any waiver on their part cannot make up for the lack of defect of jurisdiction”. (emphasis is mine).

11. I associate myself with the dicta in the case of **Macfoy vs. United Africa Co. Ltd (1961) 2 ALL ER 1169 at 1172** to the effect that where an act is a nullity it is trite that it is void and if an act is void, then it is in law a nullity as it is not only bad but incurably bad and there is no need for an order of the Court to set it aside, though sometimes it is convenient to have Court declare it to be so.

12. Having found the proceedings and award of the defunct land tribunal in respect of this matter to have been a nullity, the adoption notwithstanding, the result of the adoption is a nullity as stated in the **Sir Ali Bin Salim** and **Macfoy** cases cited above.

13. In the circumstances I make the following orders;

a. The Notice of Motion be and is hereby allowed.

b. That this Honourable Court DO AND HEREBY issue an order of certiorari to quash the award dated 22.6.2011 made by Meru Land Disputes Tribunal in LDT No 46 of 2010.

c. The Costs of this application in favour of the Exparte Applicant.

Orders accordingly.

DATED, DELIVERED AND SIGNED THIS 28TH DAY OF JUNE 2018

J.G. KEMEI

JUDGE

In the presence of:

C/A Mutua

Muchiri holding brief for Mutwiri Arimi for Exparte Applicant

Kiongo for Respondent

Kiogora Arithi for Interested party