



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**JR MISC. NO 22A OF 2011**

**IN THE MATTER OF AN APPLICATOIN FOR JUDICIAL**

**REVIEW FOR ORDERS OF CERTIORARI AND FOR**

**AN APPLICATION FOR SUCH RELIEF**

**AND**

**IN THE MATTER OF MERU CENTRAL DISTRICT LAND**

**DISPUTE TRIBUNAL NO. 27 OF 2010 AND READ**

**IN MERU CMCC LDT NO 7 OF 2011**

**AND**

**IN THE MATTER OF LR NO. ABOOTHUGUCHI/IGANE/1837**

**BETWEEN**

**REPUBLIC.....APPLICANT**

**VERSUS**

**MERU CENTRAL DISTRICT LAND**

**DISPUTES TRIBUNAL.....RESPONDENT**

**NKONGE M' MURUNGI.....1<sup>ST</sup> INTERESTED PARTY**

**ALEXANDER MWAKI MUTHURI.....2<sup>ND</sup> INTERESTED PARTY**

**MWORIA NKONGE.....EX PARTE APPLICANT**

**JUDGMENT**

1. This is an application for an order for certiorari to quash the decision of Land Dispute Tribunal made on 8/2/11. The decision was adopted by Chief Magistrate's Court on 4/3/2011 in CMCC No 7 of 2011.

The application relates to LR No. ABOTHUGUCHI/IGANE/1837(suit land) measuring 3.3 acres. In the claim the application seeks the following orders;-

a) That this Honourable be pleased to issue an order for certiorari to call up and bring into this Honourable Court for the purposes of being quashed the attached award of Meru Central District Land Disputes Tribunal Case No 27 of 2010 and read in Court on 4.3.2011 in Meru CMCC LDT No. 7 of 2011.

b) The Costs of this application be paid by the Respondent and the interested parties.

2. The Applicant applied for and was granted leave to file the application on 7/4/11. The application was duly filed on 24/4/11.

3. The Notice of Motion is premised on the ground that the award of Meru District LDT Tribunal lacked jurisdiction. He also sought an order on costs.

4. The award of LDT was made on 8/2/11. It is as follows;

a) It is true that the Shamba is at Abothuguchi/Igane/1837.

b) It is true that the father gave his son 2 acres, ½ an acre to buyer and remained with 0.84 points.

c) The Tribunal learnt that Mworira Nkonge wanted to get his portion of ½ acre as he bought the portion at 50,000/=.

d) That the Tribunal decided that the title in question should be given to his father and his son jointly so that the intention of selling the Shamba should be avoided.

e) The cost of surveyor to give the buyer ½ acre and remains with 2.84 should be met by the buyer Alexander Mwaki Muthuri.

5. On the 4/3/11 the decision of LDT was adopted by the CMCC in LDT Case No. 7/2011. The Chief Magistrate's granted leave for appeal within 30 days.

6. Aggrieved by the above Judgement of the CMCC Court the Applicant filed this Judicial Review on the basis of the grounds aforestated. In his verifying affidavit read together with the statutory statement of facts the Applicant states that he is the registered proprietor of the suit land and that the interested parties (IP) sued him in Meru Central District Land Tribunal where an award was given and adopted by the CMCC Court on 4/3/11 to the effect that 2 acres of the suit land be transferred to the 2<sup>nd</sup> Interested party and the remainder of the land be registered jointly in the name of the Applicant and 1<sup>st</sup> Interested party. That the decision of LDT is null and void because the elders had no Jurisdiction to compel the Applicant to transfer his land to the Applicant and or 2<sup>nd</sup> Interested party.

7. The 1<sup>st</sup> Interested party opposed the application and filed a Replying Affidavit sworn on 26/9/11. In it he states that the Applicant is his son and has become registered as the owner of the suit land illegally. That he subdivided the suit land as follows;-

2 acres - Applicant

0.84 acres - 1<sup>st</sup> Interested party

0.50 acres - 2<sup>nd</sup> Interested party

8. That at the point when they had agreed to attend the Land Control Board, the Applicant changed the documents and transferred the entire land to himself as shown in the green card. The said green card

shows the suit land was first registered in the name of the 1<sup>st</sup> Interested party. He further disclosed that the 3 parties are in occupation of the portions stated in Para 8 and have each developed their portions extensively. That he filed a claim in the tribunal specifying each portion to the occupants as stated on Para 8, leading to the basis of the decision of the tribunal with exception that the 2 acres and 0.84 were to be registered in the joint names of Applicant and the 1<sup>st</sup> Interested party.

9. The 2<sup>nd</sup> Interested party did not file or challenge the application.

10. On 30/6/17 parties appeared before the Court and elected to canvass the application by way of written submissions which were to be filed by 31/7/17. It is to be noted none of the parties filed written submissions within the stipulated time given by the Court. The Applicant filed his written submissions on 27/9/17. By time of writing the judgement the 1<sup>st</sup> and 2<sup>nd</sup> Interested party have not filed any written submissions.

11. In the submissions for the Applicant he has identified only one issuance for determination. It is whether the Meru Central Land Dispute has jurisdiction with respect to title and ownership of land. He relied on written law particularly section 3 of Land Dispute Tribunal and cited case law in **LIVINGSTONE KUNINI NTUTU VS. MINISTER FOR LANDS & 4 OTHERS (2014) ECLR** and **MASAGU OLE KOITELEL NAUMO V PRINCIPAL MAGISTRATE KAJIADO LAW COURTS & ANOTHER (2014) ECLR**

12. The powers of the defunct Land Disputes Tribunal are set out under section 3 (1) of the Land Disputes Tribunal Act (now repealed) as thus;

“(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”

In the instant case the tribunal did not have powers to determine matters relating to ownership of land as they did. The Tribunal therefore acted in excess of jurisdiction.

13. It is trite law that a Courts 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**

14. 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).

15. 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).

16. 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.

17. 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.

18. In the circumstances I make the following orders;

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

b) That this Honourable DO AND HEREBY issue an order for certiorari quashing the award of Meru Central District Land Disputes Tribunal in Case No 27 of 2010.

c) The Costs of this application shall be paid by the Respondent and the interested parties equal share.

Orders accordingly.

**DELIVERED, DATED AND SIGNED AT MERU THIS 28<sup>TH</sup> JUNE 2018.**

**J.G. KEMEI**

**JUDGE**

**In the presence of:**

Kiogora Arithi for exparte Applicant

Kiongo for Respondent

1<sup>st</sup> and 2<sup>nd</sup> interested parties absent