



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA IN BUSIA**

**ENVIRONMENT AND LAND COURT**

**JUDICIAL REVIEW NO. 26 OF 2012**

**REPUBLIC .....APPLICANT**

**VERSUS**

**FUNYULA LAND DISPUTES TRIBUNAL.....RESPONDENT**

**AND**

**EVERLYN JUDITH ODUORI .....INTERESTED PARTY**

**EX-PARTE**

**PATRICIA TAAKA WANDERA**

**J U D G E M E N T**

1. The Exparte Applicant herein – **PATRICIA TAAKA WANDERA** – filed these judicial review proceedings on 30/10/2012 after obtaining leave to do so on 10/10/2012. The proceedings are against the Respondent – **FUNYULA LAND DISPUTES TRIBUNAL** – and the Interested Party – **EVERLYN JUDITH ODUORI**.

2. Everlyne and Patricia entered into a land sale agreement sometimes in the year 2007, with Patricia being the seller and Everlyne the purchaser. Patricia was selling one acre from land parcel No. SAMIA/L. BUKHULUNGU/417 for 35,000/=. Everlyne paid 20,000/= and the balance of 15,000/= was to be paid later. Everlyne is said to have refused or failed to pay the balance and Patricia then changed her mind and decided to refund the money paid.

3. It appears clear that Everlyne was not ready to accept a refund and she took Patricia to the Area Land Dispute's Tribunal at the time. The tribunal heard the matter and decided that Everlyne had to pay the remaining balance while Patricia was to ensure that Everlyne got the land. In other words, the tribunal ordered specific performance on the part of Patricia. The decision of the tribunal was adopted by the court on 16/11/2011.

4. Patricia is contesting that decision. According to her, the tribunal had no jurisdiction to order specific performance. She also avers that the tribunal was not properly constituted as six members sat to hear the matter and only three ultimately signed the decision. According to her, the sitting of the tribunal was supposed to comprise an odd-number composition and all the members present were supposed to sign the decision made.

5. It is Patricia's further position that since the sale agreement was entered into in the year 2007 and six months expired without the parties getting consent form Land Control Board, the sale had become void and Everlyne was only entitled thereafter to a refund of the money she had paid. The Land Dispute's Tribunal was faulted for proceeding with the matter in utter disregard of this legal position.

6. Everlyne's input in this matter is lacking. Her counsel, Mr. Luchivya, was served but did not respond. The matter is therefore uncontested. Mr. Wanyama appeared for PATRICIA and I have had a look at the submissions he filed. His exposition of the law is generally sound.

7. The jurisdiction of the tribunal was donated by the now repealed Land Dispute's Tribunal Act (cap 303A), which at Section 3(1) spelt out the jurisdiction as follows:

**S. 3 (1) Subject to this Act, all cases of 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.**

8. The Section 4 referred to above actually establishes the land tribunal and states that its composition includes a chairman and either two or four elders selected by the Area District Commissioner from a list of elders published in the Kenya Gazette by the relevant minister.

9. It is clear then that the tribunal could not order specific performance as it was not mandated to do so under Section 3(1) of the Act. It is also clear that it could only comprise 3 or 5 members or elders with one of them being the chairman. It could not comprise 6 members as the one herein had.

10. And it is generally clear that the dispute between the parties was generally about ownership, with Everlyne desiring that ownership be vested in her while Patricia was seeking to refund Everlyne her money so that she could continue with ownership. Certainly, the tribunal had no power to handle such dispute as the applicable statute had not mandated it to do so. The tribunal had no inherent powers of its own and could not therefore go beyond what the applicable statute provided.

11. Wanyama also made other relevant observations. He pointed out, for instance, that parties were supposed to go to Land Control Board within 6 months after entering into sale agreement. They never did and, said he, the sale became void for non-compliance. Section 8(1) actually provides that application for consent should be made to Land Control Board within 6 months of making the agreement. And it would appear under other Sections that where such application is not made, the transaction becomes void.

12. Given what has been availed by the Exparte Applicant in this matter, and granted that neither the Respondent nor the Interested Party has entered a contest, it is only fair that this court enters judgment in favour of the Exparte Applicant. I therefore enter such judgment in favour of the Applicant in terms of prayers (a) and (b) made in the Notice of Motion dated 30/10/2012 and filed here on the same date. I probably need to add that it would be in the best interest of the Interested Party to take her dispute to the appropriate forum.

**Dated, signed and delivered at Busia this 23<sup>rd</sup> day of July, 2018.**

**A. K. KANIARU**

**JUDGE**

**In the Presence of:**

Ex-parte Applicant: .....

Respondent: .....

Interested Party: .....

Counsel of Ex-parte Applicant:.....

Counsel of Respondent:.....

Counsel of Interested Party: .....