



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU.**

**MISCELLANEOUS APPLICATION NO. 15 OF 2011.**

**REPUBLIC.....APPLICANT**

**VERSUS**

**EASTERN PROVINCE LAND DISPUTES**

**APPEALS COMMITTEE.....RESPONDENT.**

**FABIAN MBAE M'IBARI..... INTERESTED PARTY.**

**EX PARTE - ZACHARY MUTHAMIA M'MWITARI.**

**JUDGMENT**

The applicant in these proceedings filed a notice of motion dated 31/3/2011 seeking the following orders:

***1. THAT this Honorable court be pleased to issue an order of certiorari to call up and bring into this Honorable Court for the purpose of being quashed the attached Award of Eastern Provincial Land Appeals Tribunal Case No. 61 of 2010 and read in court on 21/1/2011 in Meru CMCC LDT NO.6 of 2010.***

***2. THAT the costs of this application be provided for.***

The motion is brought under **Order 53 Rules 3(1), (2), (3), And 4 of the Civil Procedure Rules (Cap 21) And Sections 8 and 9 of the Law Reform Act (Cap 26)**. I have found it necessary to consider that the misdescription of the respondent by the parties to be inadvertent and for the purposes of this judgment, I preliminarily order here at the start of this judgment that it shall be described as the **“Eastern Province Land Disputes Appeals Committee”** instead of **“Eastern Province Provincial Appeals Tribunal”** as failure to do so may lead to undesired results at the stage of issuance of relevant orders. For the record both parties appear to have been of the impression that “Eastern Province Provincial Appeals Tribunal” was a correct description, which is not the case.

The grounds upon which relief is sought are laid out in the statement of facts, also dated 31/3/2011 as follows:

***(i)The Land Dispute Tribunal has no jurisdiction to hear and determine issues relating to the title to or possession of Land Registered under the Registered Land Act (CAP 300) Laws of Kenya and it has exceeded its jurisdiction by awarding L.R NO. IGOJI /MWERU II/1008 to the interested party.***

***(ii)That Land Reference Number IGOJI /MWERU II/1008 is registered in the names of the ex parte applicant and he is in possession of the Title deed for the same.***

***(iii)The award by the Tribunal as read in MERU CMCC LDT NO.6 OF 2010 is illegal as it seeks to award the ex parte applicant's said parcel of land to the interested party.***

***(iv)The ex parte applicant will suffer irreparable loss and damage if the Land is transferred to the Interested Party hence the urgency in this Application.***

In brief the jurisdiction of the respondent is being questioned in these proceedings. This kind of complaint of want of jurisdiction on the part of the respondent to hear and determine disputes relating to land which is already registered is very common and the respondent has been sued in numerous other cases on the same ground.

In the verifying affidavit sworn by the ex parte applicant in this matter the applicant states that he is the registered owner of **L R Number Igoji/Mweru II/1008** and exhibits a copy of the register as **Exhibit “ZMM2.”** He proceeds to aver that based on the advice of his advocate

he believes that the decision of the respondent is null and void ab initio in that the panel of elders had no jurisdiction to compel him to transfer any land to the interested party.

After a long period of delay during which he unsuccessfully applied vide a Chamber Summons to have the suit dismissed for want of prosecution the interested party filed a replying affidavit to the judicial review notice of motion on the **15<sup>th</sup> June 2017** and stated as follows: that he is the owner of **Plot No 1008**; that he inherited the plot from his father; that the ex parte applicant obtained title to the said plot fraudulently; that the ex parte applicant has never been in occupation of or utilized the land; that the interested party has developed the property extensively; that at the time of the issuance of the land disputes Tribunal ruling it had jurisdiction; that the award of the Appeals Committee is final and can only be challenged by an appeal on points of law to the High Court, and that the ex parte applicant submitted to the jurisdiction of the Appeals Committee.

It is not denied that the land is registered, and therefore the issue of jurisdiction is the only issue that this court will therefore determine. The applicant has relied on the cases of **Beatrice M'Marete vs The Republic and Others CA NO 59 of 2000** and also the case of **M'Timitu M'Mithirwa vs Diocese of Meru and Romano Kobia –Meru HCCC No 52 of 1998** on this point.

I subscribe to the holdings of the Court Of Appeal in the **Beatrice case (supra)** and of the High Court in the **M'Timitu case (supra)** cited by the ex parte applicant. There are numerous other decisions in which the Court Of Appeal and the High Court and this court have held that a determination of a Land Disputes Tribunal that goes beyond the parameters set out in **Section 3** of the **Land Disputes Tribunals Act** is a nullity *ab initio*. These include the case of **John Kasimu Kilatya v Chairman Machakos Land Dispute Tribunal & 2 others [2017] eKLR, C.A at Nairobi Civil Appeal No. 220 of 2015** and the case of **Republic V Chairman Kanduyi LDT Tribunal & 2 Ex-Parte [2013] eKLR, [Bungoma H.C Judicial Review 111 of 2012]**.

The contention of the interested party is that at the time of issuing its decision on the **2<sup>nd</sup> November 2010** the Appeals Tribunal had jurisdiction. This submission is in my view premised on a misapprehension that the claim of want of jurisdiction is premised on a state of affairs other than the status of the suit property as registered land. It is the registration status of the land alone at the time of the award and not the subsequent repeal of the governing statute that this court will heed. It is not denied that the suit land was registered land. It is also not denied that the implementation of the award of the Appeals Committee would involve the cancellation of the title issued in the name of the ex parte applicant. It matters not that at the Land Disputes Tribunal Proceedings that had been lodged by the interested party the tribunal had awarded the ex parte applicant the land. The interested party accused the ex parte applicant of challenging the Appeals Committee decision while he never challenged the Tribunal decision for the reason that the Appeals Committee ruled against him. In my view, the ex parte applicant cannot be accused of remaining complacent when the decision of the Tribunal favoured him because he never took the dispute to that forum in the first place. He may be excused for letting the decision of the Tribunal stand as it was not against him anyway. It is only human to do so. This court would not have expected him to act otherwise. Therefore, the interested party's argument is not valid and does not address the core issue of registered status of the land. **Section 3(1)** of the **Land Disputes Tribunals Act** provides 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,**

The decision of the Appeals Committee arose from an appeal against the award of the Tribunal which was made in proceedings in which the Tribunal had no jurisdiction. Just as in ultra vires awards made by a Land Disputes Tribunal, I consider, as the courts in the decisions cited above did, that any decision of the Appeals Committee whose implementation goes beyond division of, or the determination of boundaries to land, a claim to occupy or work land and trespass to land which are the criteria in **Section 3(1)** of the Act, to be ultra vires. The decision of the Appeals Committee impugned in these proceedings falls into that category. The judicial review Notice of Motion dated **31/3/2011** succeeds. I therefore grant prayer **number 1** of the said motion and I issue an order of certiorari to calling up and bringing into this Court for the purpose of being quashed and hereby do quash the Award of **Eastern Provincial Appeals Committee Case No. 61 of 2010** read in court on **21/1/2011** in **Meru CMCC LDT NO.6 of 2010**. The respondent and the interested party shall bear the costs of these proceedings.

Dated, and signed at Kitale on this **1<sup>st</sup>** day of **August 2018**.

**MWANGI NJOROGE**

**JUDGE**

**ENVIRONMENT AND LAND COURT, KITALE**

**Delivered at Meru on this 29<sup>th</sup> day of August, 2018 in open court in the presence of:**

Ms. Gatobu for Mr. otieno for interested party

Mr. Muriuki holding brief for Kiogora

Mr. Kiongo for respondents

C/A: Mutua

**MWANGI NJORGE**

**JUDGE**

**ENVIRONMENT AND LAND COURT, KITALE.**