



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MISC. APPLICATION (JR) NO.83 OF 2009

REPUBLIC.....APPLICANT

VS

THE CHAIRMAN MERU CENTRAL

DISTRICT LAND DISPUTE TRIBUNAL.....1ST RESPONDENT

THE CHIEF MAGISTRATE

MERU LAW COURTS.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

AGNES MBIUKI.....1ST INTERESTED PARTY

ASENATH NKUNU M'ARACHI.....2ND INTERESTED PARTY

BEATRICE NKUENE ALEXANDER.....3RD INTERESTED PARTY

NJERU KIARAGO.....4TH INTERESTED PARTY

EXPARTE.....SALACIOUS KABURU KIRIGIA

DAVID GITONGA MURUNGI

JUDGMENT

1. On 10/12/2009, the Exparte Applicants were granted leave to file Judicial Review proceedings seeking orders of certiorari to quash the proceedings and award of the Meru Land District Disputes Tribunal in LDT No 21 of 2009 read out in Court via Meru CMCC case No 43 of 2009 on 29/10/2009 by the Hon. Learned Principal Magistrate S N K Andriess. The leave granted did operate as a stay to the implementation of the award aforesaid.

2. The substantive motion was filed on 21/12/2009. The grounds in support thereof are that; The tribunal delved into the question of ownership of land which was neither in issue nor was the tribunal seized with the jurisdiction to so entertain; the tribunal acted *ultravires* the powers donated by the Land Disputes Tribunal Act No 18 of 1990; the tribunal acted unreasonably by considering extraneous and irrelevant matters; the tribunal purported to cancel genuine and legitimate title deeds contrary to the said Act.

3. The application is supported by the verifying affidavits of the exparte Applicants dated the 18/12/2009. That the exparte Applicants are registered owners of L.R No. Ngusishi Settlement Scheme /1283 & 1282. That the interested parties filed a dispute to wit; LDT No 21 of 2009 seeking beneficial shares in the suit lands. The tribunal heard the matter and awarded the land to the interested parties. This is what aggrieved the exparte Applicants and hence this Judicial Review application.

4. I have carefully considered the rival affidavits and the written submissions of the parties and the following facts are not in dispute; the exparte Applicants were the registered owners of the suit lands; the dispute was heard at the LDT tribunal which tribunal awarded the land to the interested parties. That the said award was adopted in Court on the 29/10/2009 and the parties were informed of their right to appeal

within 30 days;

5. The interested parties chose not to file any written submissions despite being present in Court when directions were taken.

6. The jurisdiction to hear and determine disputes by the Land Disputes Tribunals was donated by the Land Disputes Tribunal Act 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”.

It is clear that pursuant to the above provisions, the Tribunal was not vested with jurisdiction to deal with ownership in land.

7. 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) EKLK**

8. 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).

9. 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).

10. 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.

11. Having found the proceedings and award of the defunct Land Dispute 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.

12. 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 and dated 22/6/2011 made by Meru Land Disputes Tribunal in LDT No 21 of 2009.

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

Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 15TH DAY OF OCTOBER 2018

J.G. KEMEI

JUDGE