



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC JR NO. 2 OF 2014**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL MUKURWEINI AWARD NO. 2 OF 2011**

**IN THE MATTER OF**

**THE CHIEF MAGISTRATE’S COURT AT NYERI**

**AWARD NO. 20 OF 2011**

**AND**

**IN THE MATTER OF LAND REFERENCE**

**NO. GIKONDI/THIMU/624**

**REPUBLIC ..... APPLICANT**

**-VERSUS-**

**DISTRICT LAND DISPUTES TRIBUNAL MUKURWEINI .....1ST DEFENDANT**

**THE CHIEF MAGISTRATE NYERI ..... 2ND DEFENDANT**

**WANJOHI KAGWI THAIRU .....3RD DEFENDANT**

**ESTHER KIRIGO WANJOHI .....EX PARTE/APPLICANT**

**RULING**

1.Pursuant to leave granted to the *ex parte* applicant on 18th May, 2011 to apply for certiorari and prohibition, the *ex parte* applicant, Esther Kiringo Wanjohi, filed the notice of motion dated **2nd June, 2011** praying that she be granted the said orders against the defendants herein.

2 The motion is premised on the grounds that the Land Dispute Tribunal acted in excess of its jurisdiction by entertaining the proceedings preferred because of the following reasons:

- (i) The proceedings related to the estate of a deceased person;
- (ii) The estate had not been administered as by law required;

(iii) The Tribunal failed to make reference to the land in question;

(iv) The Tribunal lacked jurisdiction to entertain and adjudicate a dispute based on title to land.

3. It is pointed out that the award is yet to be adopted as a judgment of the court.

4. Terming the proceedings before the Land Dispute Tribunal a nullity, the *ex parte* applicant urges the court to allow the application as prayed.

5. In the submissions filed in support of the application, it is reiterated that the proceedings before the Tribunal were a nullity and added that the applicant had no capacity to be sued on behalf of the estate of her husband.

6. The application is opposed on the grounds that it is misconceived, incompetent, untenable and fatally defective.

### **Analysis and determination**

7. From the proceedings of the Tribunal, it is clear that the dispute before the Tribunal related to the estate of a dead person (Wanjohi s/o Ndaau). That fact is borne out in the findings of the Tribunal which were as follows:-

**“i. The defendant (Wanjohi S/O Ndaau) is deceased and Esther Kiringo (His wife) is the one who appeared before the court because she is the direct (1st) beneficiary.**

**ii. The matter of access road did not arise during the life time of the defendant;**

**iii. Although the access road will help the complainant it will also greatly help the public to access the dispensary;**

**iv. The chief summoned both parties at the dispensary they built but they did not reach an agreement;**

**v. The chief decided that he (chief) and the both parties to go to the Land Registrar but the defendant never turned up.**

**vi. Through the registrar, the chief and the plaintiff acquired a map and the map indicated that there was an access road.**

**vii. The map was produced before this court.**

### **AWARD**

**Based on the above findings, this court requests the Land Registrar to visit the site and determine the access road.**

**Each party is to meet its own cost of this suit/case.”**

8. It is also noteworthy that the Tribunal did not describe the parcel of land in respect of which the award was made.

9. As the proceedings herein related to the estate of a deceased person and there being no evidence that the *ex parte* applicant was the administrator or legal representative of the deceased, I find and hold that the proceedings were irregular and unlawful as they offended the provisions of **Section 45** of the Law of Succession Act, Cap 160 Laws of Kenya. In this regard see the said provisions of the law which provides as follows:

**“45 (1). Except so far as expressly authorized by this Act or by other written law, or by a grant of representation under this Act, no person shall, for any purpose take possession or dispose of, or otherwise intermeddle with any estate of a deceased person.**

**2). Any person who contravenes the provisions of this section shall-**

**a). be guilty of an offence....”**

10. In the instant case, the Tribunal proceeded against the estate of the ex parte applicant deceased husband when the estate was legally speaking not a party to the suit. By so doing, the Tribunal denied the estate an opportunity to be heard in the case urged against it, thus breaching the principle of natural justice which requires that before a decision that is likely to negatively impact on a person is made, the person to be affected by the decision be given an opportunity to defend himself.

11. It is trite law that an order of *certiorari* will issue where the court is satisfied that the impugned decision was made without or in excess of jurisdiction, or where the rules of natural justice have not been complied with. See **Kenya National Examination Council V. Republic Ex parte Geoffrey Gathenji Njoroge and others**, Civil Appeal No. 266 of 1996.

12. Having determined that the decision of the Tribunal was irregular and unlawful, I find and hold that the *ex parte* applicant has made up a case for being granted the orders sought. I consequently find the application herein to be merited and allow it as prayed.

**Dated, signed and delivered in open court at Nyeri this 22<sup>nd</sup> day of March, 2017.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

Mr. Kiminda h/b for Mr. Kiboi for the applicant

N/A for the respondent and interested party

Court clerk - Esther