



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**JUDICIAL REVIEW NO. 112 OF 2011**

**REPUBLIC.....APPLICANT**

**NYANDARUA KIPIPIRI DIVISION LAND DISPUTES TRIBUNAL.....1<sup>ST</sup>  
RESPONDENT**

**NYAHURURU PRINCIPAL MAGISTRATE'S COURT.....2<sup>ND</sup> RESPONDENT**

**EX-PARTE**

**MARY WAIRIMU MACHARIA**

**AND**

**FRANCIS MATHERI KANINI**

**RAHAB WANJIRU MARIMBI.....INTERESTED PARTIES**

**JUDGMENT**

1. This is an application for judicial review seeking orders of certiorari to move to this court and quash the award of the Kipipiri Land Disputes Tribunal Case No. 16 of 2010 and the decree issued in Nyahururu PMCC Land Disputes Case No. 20 of 2011 which decree adopted the said award. It is the case of the ex-parte applicant that the Land Disputes Tribunal (LDT or the Tribunal) did not have jurisdiction to entertain the claim before it and the award and decree are therefore a nullity.

2. I have gone through the award sought to be quashed. I can see that the claim before the Tribunal was presented by Francis Matheri Kanini and Rahab Wanjiru Marimbi (the interested parties herein) against the ex-parte applicant. It was alleged by Francis Matheri Kanini that the ex-parte applicant sold to him a plot measuring 50 X 100 feet from her mother's land described as Nyandarua/Geta/1057 but she had refused to deliver title to him. It was more or less the same claim by the 2nd claimant before the Tribunal. In the Tribunal, the ex-parte applicant averred inter alia that she made a mistake in selling land that belonged to her deceased mother and offered a refund. In their decision, the panel decided that the ex-parte applicant should give to Francis Matheri Kanini a Plot No. 2 and to Rahab Wanjiru a Plot No. 3. It was further held that the plots should be surveyed and each person given their title deeds.

3. In her affidavit in support, the ex-parte applicant has deposed that the suit land is agricultural land still registered in the name of the Settlement Fund Trustees and is yet to be discharged. She has accepted that she did sell some of this land to the interested parties but she later learnt that she had no powers to dispose

of the property of her deceased mother as she was not the legal representative of her estate. She has deposed that she offered to refund the interested parties their money but they declined and filed the claim before the Tribunal. She has averred that there was no Land Control Board consent issued for the transactions. She has contended that the Tribunal had no jurisdiction, and that in any event, the claims were statute barred.

4. The respondent filed grounds of opposition stating that the application contravenes the mandatory provisions of Order 53 Rule 2 of the Civil Procedure Rules and lacks merit.

5. In his replying affidavit, the 1st interested party has deposed inter alia that he and the 2nd interested party purchased plots from the ex-parte applicant on 11 March 1996 and 19 May 1999 respectively. He has a balance of Kshs. 20,000/= but the 2nd interested party has paid the full purchase price. It is deposed that the ex-parte applicant presented that she was selling the plots in order to enable her pursue a succession cause over her mother's estate. He has stated that an offer for refund was made but he declined. It is their view that the Tribunal had jurisdiction to hear the matter.

6. I have taken note of the submissions of Mr. Waichungo for the ex-parte applicant and Mr. Mbeche for the interested parties. The respondents made no submissions and did not expound on their Grounds of Opposition.

7. I have considered the matter and I must allow the application. It is my considered view that the Tribunal had no jurisdiction to entertain the matter and the award and subsequent decree are therefore null and void. I say so because the jurisdiction of the Land Disputes Tribunal was elaborated in Section 3 of the Land Disputes Tribunal Act (now repealed) which provided 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, shall be heard and determined by a Tribunal established under section 4.*

8. The Tribunals could therefore only hear cases concerning division of or determination of boundaries to land; a claim to occupy or work land; or trespass to land. What was presented before the Tribunal was a suit to enforce a sale agreement which was clearly outside the parameters of the jurisdiction of the Tribunal. In any event, the Tribunal could not seek to enforce the agreement because first, the land was still registered under the Settlement Fund Trustees, who were not parties to the claim before the Tribunal; and secondly, the ex-parte applicant had no capacity to sell land that fell within the estate of her late mother without the estate having been distributed or without an order of court. Moreover, the Tribunal did not consider the requirements of the Land Control Act, Cap 302, Laws of Kenya, which make it mandatory for one to seek the consent of the Land Control Board before any disposition over agricultural land may be entered. These flaws aside, what is most important is that the Tribunal had no jurisdiction to entertain such a claim.

9. I allow this judicial review motion and proceed to quash both the award and the decree issued on 20 September 2011 pursuant to the award. The ex-parte applicant shall have the costs of this motion as against the respondents and interested parties who are the persons who presented the claim before the wrong forum.

10. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 16<sup>TH</sup> day of March 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**

**IN PRESENCE OF :-**

Mr. Mbeche for the Interested parties.

No appearance on the part of M/s Waichungo & Co. Advocates for the Ex-parte Applicant.

No appearance on the part of the State Law office for the respondents

Court Assistant : Nelima

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**AT NAKURU**