



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

MISC. CIVIL CASE NO. 131 OF 2012

IN THE MATTER OF: THE LAND DISPUTES TRIBUNALS ACT, ACT NO. 18 OF 1990

AND THE REGISTERED LAND ACT, CAP 300 LAWS OF KENYA

AND

**IN THE MATTER OF: AN APPLICATION FOR JUDICIAL REVIEW ORDERS OF
CERTIORARI AND PROHIBITION**

**IN THE MATTER OF: KAJIADO CENTRAL LAND DISPUTES TRIBUNAL CASE NO.
697/07/2011**

IN THE MATTER OF: SENIOR RESIDENT MAGISTRATE'S COURT

AT KAJIADO LAND DISPUTES TRIBUNAL NO. 15 OF 2012

BY

REPUBLIC.....APPLICANT

VERSUS

THE KAJIADO CENTRAL LAND DISPUTES TRIBUNAL.....1ST RESPONDENT

THE SENIOR RESIDENT MAGISTRATE'S COURT, KAJIADO.....2ND RESPONDENT

AND

LEPONYO PARTORORA.....INTERESTED PARTY

GODFREY NKEERU NYAAKE.....EX - PARTE

JUDGMENT

1. The Application before me is dated 10th July, 2012. In the Motion, the Ex-parte Applicant is seeking for the following orders:

a. An order of certiorari to remove unto this honourable court and quash the entire proceedings,

rulings, decisions and orders of the Kajiado Senior Resident Magistrate's Court made in Land Dispute Case No. 15 of 2012 Kajiado Central Land Dispute Tribunal made in Tribunals Case No. 697/07/2011.

b. An order of prohibition to prohibit the Senior Resident Magistrate's Court Kajiado from hearing, further hearing, determining, executing or in any other manner howsoever dealing with Land Dispute Tribunal Case No. 15 of 2012.

c. The costs of this Application.

2. In his Statement, the Ex-parte Applicant averred that by the 1st Respondent ordering that the Applicant should only get five (5) out of twenty six (26) acres of land he lawfully purchased, the 1st Respondent went against the doctrine of natural justice.

3. According to the Applicant, the 1st Respondent's finding were contrary to the evidence adduced; that the 1st Respondent failed to appreciate that the agreement for sale between the Applicant and the Interested Party was binding and that the members of the Tribunal were biased against the Applicant.

4. Although the Respondents and the Interested Party were served with the Notice of Motion, they did not file a response. The Applicant's counsel filed submissions and authorities which I have considered.

5. It is not in dispute that the Ex-parte Applicant entered into an Agreement of Sale with the Interested Party on **6th September, 1994**. What was in dispute before the Tribunal was the acreage of land that the Applicant purchased from the Interested Party.

6. After hearing the parties, the Tribunal made the following findings:

"2. That the Surveyor to enter into parcel No. KJD/Dalalekutuk/914 and excise 5 acres for Geoffrey Nkeeru Nyaake and the remainder for Leponyo Partorora.

3. That the registrar to register the parcels as per No. 2 above."

7. It is not clear from the proceedings how the Tribunal arrived at the above findings in view of the Agreements of Sale that were placed before it.

8. Without stating whether or not the Tribunal interpreted the agreements between the Applicant and the Interested Party correctly, I have to determine if indeed the Tribunal had the jurisdiction to deal with the issues that were before it.

9. The jurisdiction of the Tribunal was donated by the provisions of Section 3(1) of the repealed Land Disputes Tribunal Act which provided as follows:

"3(1) Subject to this Act, all cases of a civil nature involving a dispute 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

shall be heard and determined by a Tribunal established under Section 4."

10. Considering that the issues that were before the Tribunal was whether the Agreement between the Applicant and the Interested Party was in respect of 26 acres or 20 acres and whether the full purchase price had been paid, those issues were outside the jurisdiction of the Tribunal.

11. The Tribunal did not have the jurisdiction of interpreting the Agreements between the two parties and arriving at the conclusion that it did. Interpretation of Agreements is the preserve of the courts.

12. For those reasons, I find and hold that the Respondents acted without jurisdiction. I therefore allow the Notice of Motion dated 10th July, 2012 as prayed.

DATED AND DELIVERED AT MACHAKOS THIS 3RD DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE