



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT KISII**

**CASE NO. 91 OF 2011**

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

**AND**

**IN THE MATTER OF LAW REFORM ACT (CAP 28 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF ORDER 53 OF THE CIVIL PROCEDURE RULES**

**AND**

**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

**AND**

**IN THE MATTER OF THE REGISTERED LAND ACT (CAP 300 LAWS OF KENYA)**

**AND**

**IN THE MATTER OF MOSOCHO LAND DISPUTES TRIBUNAL**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**VERSUS**

**THE CHAIRMAN MOSOCHO LAND DISPUTES TRIBUNAL..... 1<sup>ST</sup> RESPONDENT**

**THE CHIEF MAGISTRATE'S COURT KISII ..... 2<sup>ND</sup> RESPONDENT**

**AND**

**GABRIEL AYIENDA CHALANGO ..... INTERESTED PARTY**

**J U D G M E N T**

1. The ex parte applicant was granted leave to file a Judicial Review application on 25<sup>th</sup> October 2011 and

on 14<sup>th</sup> November 2011 filed the Notice of Motion dated 13<sup>th</sup> November 2011 seeking the following orders inter alia:-

- 1. An order of certiorari to remove unto the High Court and quash the proceedings and decision of Mosoch Land Disputes Tribunal given on 27<sup>th</sup> day of April 2011 relating to land parcel No. West Kitutu/ Bogusero/1005 directing that a portion of the said land be curved out and retransferred back to the original owner one Gabriel Ayienda Jalango.**
- 2. An order of certiorari to remove the decision and proceedings of the Chief Magistrate at Kisii in Misc. Civil Application No. 90 of 2011 seeking to confirm or adopt the award made by Mosoch Land Disputes Tribunal in Tribunal Case No. 20 of 2011 unto the High Court for purposes of quashing the same.**
- 3. An order of prohibition to bar the Chief Magistrate's Court at Kisii from issuing a decree in Misc. Civil Application No. 90 of 2011 and/or allowing any further execution process in respect of the decree.**
- 4. Costs of the application be provided for.**

The application was grounded on the facts set out in the statement of facts and the verifying affidavits sworn by Selevina Monyancha filed with the application for leave.

2. The applicant's contention is that the Land Disputes Tribunal in the instant matter acted without jurisdiction in entertaining the dispute which related to title to registered land. The ex parte applicant asserted she was the registered owner of land parcel No. **West Kitutu/Bogusero/1005** by way of transmission from her late husband who was previously the registered owner. The ex parte applicant stated that her late husband had purchased the land from one Gabriel Ayienda Jalango in 1977 for the sum of kshs.2,700/= and was registered as the owner thereof.

3. The ex parte applicant averred that the Land Disputes Tribunal made a decision that the land be transferred back to the original owner, Gabriel Ayienda Jalango and that an application for the adoption of the decision as a judgment of the court had been made before the Chief Magistrate's Court, Kisii. The ex parte applicant avers the decision by the Land Disputes Tribunal is null and void and hence the same cannot be properly adopted as a judgment and for that reason applies for an order of certiorari to quash the Tribunal's decision and prohibition to bar the adoption and implementation of the decision by the Chief Magistrate's Court.

4. The interested party, Gabriel Ayienda Jalango, opposed the ex parte applicant's application and filed a replying affidavit sworn on 8<sup>th</sup> February, 2012 filed on the same date. The interested party averred that the registration of one, Monyancha Sokoro as owner of the suit land in 1985 was fraudulent. The interested party averred that he only sold a portion of the suit land to the applicant's husband who took advantage and caused the entire parcel of land to be transferred to himself. The interested party stated that he initiated the proceedings before the disputes tribunal at Mosoch when he realized he was defrauded and that the tribunal ordered the land to be transferred back to him.

5. On 7<sup>th</sup> May 2013 the court was notified that the interested party had died and that the advocate would make necessary steps to have him substituted. The interested party's advocate however never substituted the interested party. As the suit nonetheless remained alive against the respondent whose actions were the subject of the judicial review application, the court on 21<sup>st</sup> October 2015 directed the application to be argued by way of written submissions.

6. Only the ex parte applicant filed her submissions dated 14<sup>th</sup> January 2016 on 15<sup>th</sup> January 2016. Having reviewed the pleadings and the applicant's submissions the issue for determination is whether the Land Disputes Tribunal had jurisdiction to deal with the matter and further whether the Chief Magistrates Court could properly adopt the decision of the tribunal as judgment and implement the same.

7. The jurisdiction of the Land Disputes Tribunals established under Section 4 of the repealed **Land Disputes Tribunals Act No. 18 of 1990** was provided under Section 3(1) of the Act which was in the following terms:-

**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 Land Disputes Tribunal could only exercise jurisdiction in regard to matters that it had been conferred jurisdiction under the aforesaid Section 3(1) of the Act to deal with. It had no jurisdiction to deal with matters touching on title in regard to registered land. The tribunal in the instant matter clearly dealt with title to registered land. In the proceedings before the Tribunal the interested party admitted that he had sold a portion of his land to the husband of the applicant and that he had gone to the land board purportedly for subdivision and had signed some forms but later when he did a search at the lands office he discovered that the applicant's husband had caused his (the interested party's) entire parcel of land to be transferred to his name. The Tribunal acknowledged this fact as in their determination they directed that land parcel **West Kitutu/Bogusero/1005** be transferred back to the original owner, Gabriel Ayienda by the land registrar. The Tribunal's decision, in essence, was annulling and ordering cancellation of a registered title which the Tribunal definitely had no jurisdiction to do. The Tribunal acted in excess of its jurisdiction which rendered its decision null and void.

9. Various courts have time and again held that land disputes tribunals established under Section 4 of the **Land Disputes Tribunals Act No. 18 of 1990** lacked jurisdiction to deal with title and any resultant awards in cases where the Tribunals made decisions touching on title to registered land such awards were a nullity. See the cases of **Wilson Wokabi –vs- Joseph Gatheru Njanya [2007] eKLR, Msambweni Land Disputes Tribunal & Another –vs- Bakari Ali Mwakumanya [2014] eKLR** and **Republic –vs- Chairman Land Disputes Tribunal Nambale, ex parte John Okiiru Agwata [2010] eKLR**.

10. In the case of **Republic ex parte Peter Nicholas Mautia –vs- Keumbu Land Disputes Tribunal & 2 Others [2016] eKLR** this court held that where the Land Disputes Tribunal acted in excess of its jurisdiction as conferred under Section 3(1) of the **Land Disputes Tribunals Act**, the decision emanating from any such proceedings was a nullity and of no consequence and the court could not purport to adopt the same as a judgment as there was indeed nothing that could be adopted. A court cannot give effect to a decision that is null and void. Okongo, J. in the case of **Republic –vs- Chairman Borabu Land Disputes Tribunal & 2 Others ex parte Florence Nyaboke Machani [2014] eKLR** succinctly summed the position where a Tribunal's decision is in excess of jurisdiction thus:-

**“Now the decision of the 1<sup>st</sup> respondent was null and void, was there anything that the 2<sup>nd</sup> respondent could adopt as a judgment of the court? In the case of Macfoy –vs- United African Co. Ltd [1961] 3ALL ER 1169 Lord Denning stated as follows concerning an act which is a nullity at page 1172;**

**“If an act is void, then it is in law a nullity. It is not only bad but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without much ado, though it is sometimes convenient to have the court to declare it to be so. And every proceeding which is founded on it is also incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”**

**I am of the view that since the decision of the 1<sup>st</sup> respondent was a nullity there was nothing in law that could be filed before the 2<sup>nd</sup> respondent for adoption as a judgment of the court. Such judgment would equally be a nullity.**

**I am of the view that Section 7 of the Land Disputes Act pursuant to which the decision of the 1<sup>st</sup> respondent was lodged with the 2<sup>nd</sup> respondent for adoption envisaged a lawful decision by the 1<sup>st</sup> respondent. Since the decision of the 1<sup>st</sup> respondent was a nullity for want of jurisdiction, there was nothing on the basis of which the 2<sup>nd</sup> respondent could enter judgment and issue a decree.”**

11. In the instant case, I have held that the 1<sup>st</sup> respondent acted without jurisdiction in that the 1<sup>st</sup> respondent entertained a dispute respecting title to land that was registered which was without doubt outside its mandate as conferred by Section 3(1) of the **Land Disputes Tribunals Act**. The 1<sup>st</sup> respondent acted in excess of its mandate and jurisdiction and consequently its decision was null and void and therefore amenable to judicial review. The decision of the 1<sup>st</sup> respondent being null and void there was no valid decision that the 2<sup>nd</sup> respondent could properly adopt as a judgment of the court. Even if the decision had infact been adopted as a judgment it would be inconsequential as no interest or right could flow from a decision that is itself a nullity. Such judgment would be liable to be quashed if an appropriate application is made as in the instant matter.

12. In consequence, I find the ex parte applicant’s Notice of Motion dated 13<sup>th</sup> November 2011 meritorious and I accordingly grant the order sought therein in terms of prayers 1, 2 and 3 of the Notice of Motion. I make no orders for costs and I direct that the parties bear their own costs of the application.

13. Orders accordingly.

**Judgment dated, signed and delivered at Kisii this 31<sup>st</sup> day of May, 2017.**

**J. M. MUTUNGI**

**JUDGE**

**In the presence of:**

.....for the plaintiff

.....for the defendant

.....court assistant

**J. M. MUTUNGI**

**JUDGE**