



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**JR. MISC NO 52 OF 2008**

**1. JULIUS M. SANDI .....1ST APPLICANT**

**2. MORRIS M. KIRAGU .....2ND APPLICANT**

**VERSUS**

**THE CHAIRMAN PROVINCIAL DISPUTES**

**TRIBUNAL APPEAL COMMITTEES .....RESPONDENT**

**DAVID GICHURU MUGAMBI .....1ST INTERESTED PARTY**

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

1. The Notice of Motion dated 25th July, 2008 seeks the following orders.

(a) The order for certiorari do issue to call for and quash the decision of the Provincial Dispute Tribunal Appeal Committee dated 18th April, 2008 in Appeal No. 60 of 2004 filed in Chief Magistrate's LDT No. 92 of 2004 and read on 13th June, 2008.

(b) The Prohibition Order do issue to stop the implementation of the Provincial Disputes Tribunal Committee award dated 18th April, 2008 and read to parties on 13th June, 2008 in Chief Magistrate's Court vide NO. 92 of 2004 for being nullity.

(c) The costs of this application be provided for.

2. It is supported by statutory statement of facts pursuant to order L111 Rule (2) of the Civil Procedure Rules which states as follows:-

**A. NAMES AND DESCRIPTION OF PARTIES.**

(1) The names of the 1st applicant is Julius M. Sandi Kenyan by birth and working for gain in Imenti North District, and his address of service for purposes of this suit instant suit is P.O Box 1933, Maua.

(2) The 1st applicant is the registered owner of land Parcel No. NYAKI/KITHOKA/2583.

(3) The Interested Party is a Kenyan citizen by birth residing and working for gain in Imenti North District and his address of service for purposes of this instant suit is P.O BOX 76270, NAIROBI.

(4) The 2nd applicant is the registered owner of land parcel No. NYAKI /KITHOKA/ 2584.

**B. GROUNDS UPON WHICH RELIEF SOUGHT**

(a) Leave be granted to the applicant to apply for Judicial Review in the nature of CERTIORARI AND PROHIBITION.

(b) An order of certiorari to call for and quash the decision of the provincial Dispute tribunal Appeal Committee Appeal No. 60 OF 2004 cancelling the applicant title and revert the applicant land to 2nd respondent.

(c) The decision was forwarded to Court on and read to the parties in Meru Chief Magistrate's Court LDT NO. 92 OF 2004 on 13/6/08.

(d) Costs of this application be paid by the respondent.

**C. GROUNDS UPON WHICH RELIEF SOUGHT**

(a) The provincial Dispute Tribunal Appeal Committee Eastern Province had no jurisdiction to entertain, hear and determine issues of Registered Title and ownership of land registered under Land Act (Cap 300 Laws of Kenya).

(b) The conduct and actions of the provincial Dispute Tribunal Appeal Committee Eastern Province were ultra -vires the jurisdiction conferred on them under the land Dispute Act (1990).

(c) The proceedings and the award of the Provincial Dispute Tribunal Appeal Committee Appeal no. 60 of 2004 as read to the parties vide Chief Magistrate Court LDT NO. 92 of 2004 is illegal , Null and void abinitio for the purposes and call for urgent and immediate quashing.

3. The 1st Applicant has also filed an Affidavit Verifying the correctness of the averments contained in the Judicial Review Motion where he has deponed as follows:-

(1) That he is lodging an application for leave to apply for Judicial Review orders in the nature of CERTIORARI AD PROHIBITION seeking to challenge the decision in the Provincial Lands Dispute Tribunal Appeal Committee (hereinafter referred to as Eastern P.L.D.T.A.C) Appeal No. 60 OF 2004 forwarded to court and read to parties vide LDT NO . 92 of 2004 on 13.06. 08 annexed are copies of proceedings.

(2) That the subject matter is land parcel LR. NO. NYAKI/KITHOKA/2583 & 2584 which land him and 2nd applicant bought for a valuable consideration from one DAVID GICHURU MUGAMBI and the land was registered in their names respectively under the registered Land Act Cap 300 Laws of Kenya (as per annexed title deed photocopy Marked JMS 1).

(3) That the Interested Party is a neighbour who likes to harvest where he had not planted.

(4) That clearly what transpired at the land Dispute Tribunal is illegal since the Tribunal dwelt with issues way beyond their jurisdiction.

4. The applicants were dissatisfied with the decision of the Eastern P.D.T.AC. in appeal case no.60/2004 hence their progress to the high court via this Judicial Review motion. The initial application was filed under a certificate of urgency on 8/7/08. The applicants obtained the leave on 21/7/08. The leave granted was to operate as a stay of execution of the award in Meru CMCC 92 of 04.

5. On 4/9/12 directions were Taken for the case to be heard by way of written submissions, whereby all

the parties herein have since filed their submissions.

## 6. SUBMISSIONS OF THE APPLICANTS.

The applicants aver that they are the registered owners of land n. NYAKI/KITHOKA/2583 ( for JULIUS M.SANDI, 1<sup>st</sup> applicant) and land no. NYAKI/KITHOKA/2584 ( for MORRIS M. KIRAGU 2<sup>nd</sup> applicant).

8. Applicants aver that the decision delivered by the Eastern P.L.D.T.AC had ordered that the register in respect of the two parcels of land be rectified by way of cancelling the titles to remove the names of the two respective applicants and to have the parcels registered in the name of the interested party herein. Applicants contend that the tribunal acted ultra vires by entertaining and adjudicating on issues of land ownership for land registered under Registration of lands act (now repealed).

9. Further, the applicants contend that issues appertaining to cancellation of title to land were in the domain of the Registered lands act section 143.

10. The applicants have relied on the following cases to support their case;

**1. Republic vs. central provincial Land Disputes Appeal committee (Nairobi Misc Civil Application No. 1061 of 2007) Lady Justice R.N. Sitati held.**

**2. Beatrice Marete Versus Republic Ex-parte John Gitonga Mbui (Nyeri Civil Appeal No. 259 of 2010).**

11. The applicants have also stated that the tribunal had dealt with the issue of fraud when they said that the applicants had conned the interested party which according to the applicants is ultra vires.

12. The applicants also aver that they were not given a hearing.

13. Finally, the applicants have urged the court to allow the application and to direct that the interested party be condemned to pay costs of the suit.

## 14. SUBMISSIONS OF THE INTERESTED PARTY.

The interested party has submitted that Judicial Review is concerned with decision making process and not the decision itself and hence the complaint that the tribunal had ordered for the cancellation of the two titles cannot be a ground for the Judicial Review prayers. To this end, the interested party has relied on the case of **Republic vs. Kenya Revenue Authority Ex-Parte Yaya Towers Limited (2008) ECLR**. And **Kamani vs. Kenya Anti- Corruption Commission (2007) ea 112**.

15. The interested party has argued that the applicants did not challenge the the judgment in the Chief Magistrates LDT NO. 92 OF 2004, yet once the tribunals decision was adopted as a judgment, the decision ceased to exist. The interested party cites the case of **Republic vs. Chairman, Lands Dispute Tribunal Kirinyaga District & ano, Ex- parte PETER MARU KARIUKI(2005) eCLR (SUPRA)**.

16. On the issue of jurisdiction, the interested party has stated that jurisdiction was provided for under section 4 of the LDT act, where the meaning of the tribunal was captured in section 2 to mean the land disputes tribunal. The interested party hence contends that the Land disputes appeals committee does not fall under this definition and hence their jurisdiction is not limited by section 3 of the act L.D.T.A Act In support of this averment the interested party cites the cases of;

**1. Republic vs. Chairman, Lands Dispute Tribunal Kirinyaga District & ano, Ex- parte PETER MARU KARIUKI(2005) eCLR (SUPRA).**

**2. Republic vs. Judicial Service Commission ex- parte Pareno (2004) eCLR 203-209.**

## 17. Submissions of the Respondent

The Respondent has stated that once the decision of the tribunal was forwarded to the Chief magistrate and adopted as a judgment of the court, the tribunal became functus officio, the Respondent ceased to exist and ought not to be in these proceedings. Respondent therefore states that the judgment is the one which is available to be quashed.

18. Respondent further states that the order of prohibition cannot stand as what is sought to be prohibited has already taken place and that if the court was to grant an order of prohibition, it would be in vain.

## 19. The determination.

I proceed to adopt the issues as framed by the interested party with just some slight variations. The issues are;

- i. Whether the Provincial disputes tribunal appeals committee sitting in eastern province had jurisdiction to hear and determine the matter in LDT92/04.
- ii. Whether JR motion is defective in view of the fact that what has been challenged is the decision of the tribunal and not the judgment of the magistrates court.
- iii. Whether the decision of the tribunal was ultra vires by considering issue of fraud.
- iv. Whether the rules of natural justice were flouted by the tribunal
- v. Whether the Judicial order of certiorari is the proper remedy to be sought.

## 20. Jurisdiction

Did the Provincial tribunal have jurisdiction to handle the matter in LDT NO.62/2004?. The issue of jurisdiction is two fold. On the one hand the applicants state that the appeals committee had no jurisdiction to determine a dispute touching on the cancellation of title to land, On the other hand, the interested party states that the jurisdiction of the appeals committee is not limited by section 3 of the now repealed LDT Act.

21. section 3 of the L.D.T Act reads; **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 of the act.**

Section 4 of the act reads; **(1) There shall be established a tribunal, to be called the Land Disputes Tribunal, for every registration district.**

Then section 8 of the act reads **(1) Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.**

22. From the foregoing, it is apparent that as far as the act is concerned, what goes to the appeals committee is what has come from the tribunal. If the tribunal had no jurisdiction to hear the matter, it

follows that the appeals committee would also not have jurisdiction as the nature of the dispute must fall within section 3 of the act. I make reference to the case of the **Chairman land dispute tribunal, Kirinyaga district and Albert Gachoki Muroko vs. Peter Maru Kariuki misc civil appl. No.129 /04** where **Khamoni J** stated;

***“ A party who appeals is a party to a dispute under section 3 who is aggrieved by the decision of a tribunal. A dispute under section 3 means a dispute heard and decided under the jurisdiction given by section 3 (1).When an appeal is taken to the appeals committee ,it has to be determined by the appeals committee within the limits of the jurisdiction given by section 3 (1). If that is not done , the appeals committee will not have conducted an appeal,.It will have done something else not within the mandate given to the appeals committee.”***

The upshot of this is that the decision LDT no 92/04 made by the P.L.D.A.C. eastern province was expected to be in conformity with the jurisdiction outlined under section 3 of the L.D.T Act.

23. I now proceed to examine whether the decision itself was within the ambit of section 3 of the act. To this end I make reference to the now repealed section 159 of the Registered lands act which stated;

***“ civil suits relating to the title to.....land shall be heard by the High court.....”***

In the present case, the appeals committee did deal with the issue of title. The committee had given orders of specific performance , where by the **land Registrar Meru was to remove the caution in land NYAKI/KITHOKA/2583 and NYAKI/KITHOKA/2584 and cancel the name of JULIUS M.SANDI and MORRIS M.KIRAGU respectively and replace the names with that of DAVID GICHURU B.**

I find that the appeals committee had no mandate to give orders touching on cancellation of title ,see ***James Alukoye were vs. Lurambi division land disputes tribunal & another (2006) eKLR*** where Judge G.B.M Kariuki stated;

***The powers vested in the tribunal..... Do not include the jurisdiction to grant specific performance of such contract or to decide issues affecting title to land. The lurambi lands disputes tribunal in attempting to deal with title to the said land and to determine the rights of the parties and also to decree specific performance went far beyond its powers and acted ultra vires such powers. Its decision was clearly a nullity.”***

24. This far, the Motion does succeed on the basis that the appeals committee had no jurisdiction to deal with the matter.

25. Whether the motion fails on the grounds that the decision ceased to exist once it was adopted as a judgment of the court. It has been argued by the interested party that the applicant ought to have challenged the judgment before the chief Magistrate, as the Respondent had become functus officious.

The role of the magistrates court was to adopt the decision of the tribunals and to have the matter enforced in accordance with the civil procedure act. The matter was therefore before a magistrate purely for enforcement purposes. I am hence not in agreement with the contention that what should have been challenged was the Judgment and not the decision. The decision lived in the body of that judgment .

26. Was the decision of the committee ultra vires by considering the issue of fraud?.Part of the decision of the committee reads “ ***This panel committee has proved without doubt that the Respondents Conned the appellants.***”.again the fall back is section 3 of the act. As long as the nature of the dispute was within the ambit of the proviso, then it was within the mandate of the tribunal to comment on matters of fraud. But in the present case ,this court has already established that the nature of the dispute was one beyond the jurisdiction of the committee.

27. Were the rules of natural justice flouted?

The applicants aver that they were not heard. The proceedings indicate that applicants were not present during the proceedings. However, the committee has commented on the efforts that had been made to trace the applicants. The applicants have not clarified that issue especially whether the contacts they had given were the correct ones or not. The motion would not have succeeded on this ground.

28. Is the motion properly before the court. If the orders sought for are issued, is issued, would it be in vain? The original motion dated 25/7/08 contained both the prayer of prohibition as well as that of certiorari. The motion was amended on 21/2/12 where the relevant provisions of the law were cited. The decision of the tribunal is dated 17/1/08. It is not clear as to when the same was adopted as a judgment of the court, but certainly it is apparent that no decree was extracted. On 21/7/08, the applicants did obtain an order of leave which has been operating as a stay since then. What is it that happened from the time the decision was made to the time the stay was granted which would render the orders sought for useless. Nothing! At least nothing has happened going by the arguments raised by all the parties here in.

29. That being the case, I conclude that the orders sought for are meritorious. The motion succeeds on the basis that the appeals committee lacked jurisdiction to hear the matter.

30. I hereby grant orders;

(a) for certiorari to issue to call for and quash the decision of the Provincial Dispute Tribunal Appeal Committee dated 18th April, 2008 in Appeal No. 60 of 2004 filed in Chief Magistrate's LDT NO. 92 of 2004 and read on 13th June, 2008.

(b) of prohibition to issue to stop the implementation of the Provincial Dispute Tribunal Committee award dated 18th April, 2008 and read to parties on 13th June, 2008 in Chief Magistrate's Court vide LDTNO. 92 of 2004 for being nullity.

(c) Each party is to bear their own costs of the suit.

**DELIVERED IN OPEN COURT AT MERU THIS 10TH DAY OF MAY, 2017 IN THE PRESENCE OF:**

CA: Janet

Kiango for respondent present

F.K. Gitonga for Interested Party Absent

All parties present

Mutwiri for Applicant present

**HON. LUCY MBUGUA**

**JUDGE**