



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

**AT NAKURU**

**JUDICIAL REVIEW NO. 26 OF 2010**

**REPUBLIC.....APPLICANT**

**VERSUS**

**BAHATI LAND DISPUTES TRIBUNAL.....1<sup>ST</sup> RESPONDENT**

**CHIEF MAGISTRATES COURT, NAKURU.....2<sup>ND</sup> RESPONDENT**

**AND**

**JAMES THUKU GITONGA.....INTERESTED PARTY**

**EX-PARTE**

**JOYCE WANJIRU MAINA**

**JUDGMENT**

1. This is an application in the nature of judicial review, seeking orders of certiorari to remove to this court and quash the proceedings and award of the Bahati Land Disputes Tribunal, rendered in the case, Bahati Land Disputes Tribunal Case No. 132 of 2008 together with the proceedings and decree issued in Nakuru Chief Magistrate's Court Land Dispute Case No. 53 of 2009 which adopted the impugned award of the Tribunal. It is the contention of the ex-parte applicant that the Bahati Land Disputes Tribunal (hereinafter "the Tribunal"), had no jurisdiction to entertain the dispute herein.

2. The ex-parte applicant is administratrix of the estate of one Maina Njoroge Gaitha, the allottee of a Plot No. 27 in Bahati Settlement Scheme (hereinafter "the suit land"). The said Maina Njoroge Gaitha died on 5 July 1995. Upon his death, the ex-parte applicant applied for, and was on 17 October 2005, issued with a grant of letters of administration of his estate. The grant was confirmed on 19 January 2007 with the suit land being distributed to four persons, namely the ex-parte applicant (4.5 acres); Joseph Kamotho Maina (2 acres); Irene Muthoni Maina (1 acre) and Joseph Mwangi Macharia (1.5 acres). On 4 June 2008, the interested party (James Thuku Gitonga), filed a suit before the Tribunal claiming that he had purchased 1.5 acres of the suit land from one George Maina, who is a son of the ex-parte applicant, and sought orders that the said portion be transferred to him by the ex-parte applicant. At the Tribunal, the interested party sued the ex-parte applicant, George Maina and Irene Muthoni Maina.

3. The evidence tabled at the Tribunal was that George Maina's father (the deceased) had allegedly granted to George Maina 1.5 acres of the suit land. George Maina then sold this portion to one Peter

Maina Karuga and received a down payment of Kshs. 56,000/=. This sale was not completed and George Maina needed to refund this deposit to Mr. Karuga. He did not have money, and so as to raise funds, he decided to resell the land to the interested party (claimant before the Tribunal) for the sum of Kshs. 232,500/=. The sale agreement was drawn on 9 March 1998. The interested party then moved into the land and build a house. When he wanted to connect electricity, he discovered that there was an ongoing succession matter over the estate of the late Njoroge Gaitha.

4. The Tribunal was of opinion that George Maina colluded with his mother, to omit his name from the succession matter so that the interested party may be put off. They were of the view that he was entitled to a share of 1.5 acres out of the estate of his late father. In their decision, they directed that the ex-parte applicant do include the name of George Maina as eldest son to the deceased (as one of the beneficiaries of the estate of the late Gaitha) and that his inherited portion of 1.5 acres of the suit land be registered in the name of the interested party. The decision was made on 2 September 2009 and the ex-parte applicant given 30 days to appeal.

5. On 16 February 2010, the ex-parte applicant applied for and was granted leave to commence these proceedings. The main motion was filed on 26 February 2010. As I mentioned earlier, the main complaint of the ex-parte applicant is that the Tribunal had no jurisdiction to entertain the dispute. It is also argued that the sale agreement sought to be enforced was not supported by the consent of the Land Control Board as required by law since the sale was over agricultural land. It is further contended that the sale agreement between George Maina and the interested party was null and void since George Maina had no capacity to sell the land.

6. In opposing the motion, Mr. Maina for the interested party, submitted inter alia that there was nothing to show that the Tribunal proceedings were flawed or irregular. He submitted that leave to appeal was granted but none was filed. He was of the view that the proceedings herein are an abuse of the process of court. He offered that the interested party is on the suit land having purchased it in the year 1998.

7. I have considered the matter. If I am to hold that the Tribunal did not have jurisdiction over the dispute herein, then I will have to allow this motion and issue an order of certiorari as prayed.

8. The jurisdiction of Land Disputes Tribunals is set out in Section 3 of the Land Disputes Tribunal Act (now repealed). The same is drawn 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.*

9. It will be noted from the above, that Land Disputes Tribunals were only permitted to hear cases concerning division of, or determination of boundaries to land; claims to occupy or work land; or disputes over trespass to land. What was presented before the Tribunal was a suit to enforce a sale agreement which the interested party had with one George Maina, a son of the ex-parte applicant. It is clear to me that this is not among the disputes singled out by Section 3 of the Land Disputes Tribunal Act. The Tribunal had no jurisdiction to hear a case where one seeks specific performance of a sale agreement. Such dispute had to be presented before the ordinary courts and not the Land Disputes Tribunal.

10. Moreover, the Tribunal went beyond its powers in modifying the distribution of the estate of the late Gaitha as directed by the High Court in the Succession Cause No. 224 of 2005, which was the succession cause in respect of the estate of the late Gaitha. The High Court judge had already distributed the estate of the deceased and George Maina was not among those who benefited from the said distribution. In ordering George Maina to be awarded 1.5 acres of the suit land, the Tribunal was essentially sitting on appeal on the distribution of the High Court, for which it clearly had no jurisdiction.

11. It also appears that the land in issue is agricultural land for which consent of the Land Control Board was required as stipulated in the Land Control Act. The Tribunal could not attempt to circumvent this provision nor allocate themselves the power to affirm sales of agricultural land which is a power vested upon the Land Control Board.

12. Moreover, I do not see how George Maina had capacity to sell the land in question. At the time the sale took place, the owner of the said land had died and George Maina did not hold any letters of administration over the estate of the deceased. I wonder how the Tribunal was minded to enforce such a sale.

13. Whichever way you look at it, there is no way the award of the Tribunal can be said to have been made with jurisdiction.

14. It was argued that the ex-parte applicant was given time to appeal and that she ought to have filed an appeal and not file this suit. There is no law that bars a person aggrieved by a decision of a Land Disputes Tribunal from filing a motion for judicial review against a decision of such Tribunal. The ex-parte applicant could of course appeal, but she was not precluded from filing a motion such as this. I see no merit in the argument by the interested party.

15. Given the above, I do allow this motion. I hereby quash, by an order of certiorari, the decision of the Bahati Land Disputes Tribunal in issue herein. I also quash the subsequent decree which adopted the award.

16. The costs of this motion shall be shouldered by the interested party who filed the dispute in the wrong forum.

17. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 4<sup>th</sup> day of May 2017.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :-**