



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW APPLICATION NO 68 OF 2010**

**REPUBLIC .....APPLICANT**

**VERSUS**

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

**CHIEF MAGISTRATE’S COURT, NAKURU.....2<sup>ND</sup> RESPONDENT**

**JOHNSTONE K MWANGI .....INTERESTED PARTY**

**EX-PARTE**

**MARY AKAI**

**RULING**

***(Judicial Review application to quash decision of the Land Disputes Tribunal; Tribunal having engaged in awarding land to the interested party; whether Tribunal had jurisdiction to do so; Tribunal had no jurisdiction; award of Tribunal quashed)***

1. The Motion before me is a judicial review application seeking orders of certiorari to quash the proceedings and ruling of the Bahati Land Disputes Tribunal (hereinafter "The Tribunal"), case number 181 of 2010, and the proceedings of Nakuru Chief Magistrate's Court Land Dispute Case No. 7 of 2010. It is the contention of the ex-parte applicant that the said Tribunal did not have the requisite jurisdiction to handle the dispute, and therefore its decision ought to be quashed. At the time the Motion was filed, the decision of the Tribunal was awaiting adoption by the Chief Magistrate's Court, and the applicant obtained a stay of proceedings before the award of the Tribunal could be adopted.

2. The application is supported by the affidavit of the applicant, and to it, is annexed the decision of the Tribunal sought to be quashed. Briefly, the ex-parte applicant has averred that she is the owner of the land parcel Bahati /Bahati Block 1/1546 by virtue of purchase. I have not seen the title deed or other proof of ownership but it seems as if the matter before the Tribunal proceeded as if she was the owner. The Tribunal proceedings were commenced by one Johnstone Kamau Mwangi, the interested party herein, who alleged to have purchased a portion of the suit land from the ex-parte applicant, pursuant to an agreement dated 22 September 2003. Mr. Mwangi complained that despite having paid the full purchase price, the ex-parte applicant had refused to transfer the property to her. In its award, the Tribunal found that there was a sale and ordered that the ex-parte applicant be compelled to issue title deed to the interested party. It is this decision which is sought to be quashed in these proceedings.

3. The interested party did not file any papers in respect of these proceedings, and the State Law Office on

behalf of the respondent, did not oppose the application to quash these proceedings.

4. I have considered the matter and I am of the opinion that the Motion herein must succeed. It is apparent that the Tribunal acted in a dispute in which it did not have jurisdiction. The jurisdiction of the Land Disputes Tribunal (now defunct) was spelt out in the Land Disputes Tribunal Act, Act No. 18 of 1990 (repealed by the Environment and Land Court Act in 2011). Section 3 of the repealed statute 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.*

5. It will be seen from the above, that the jurisdiction of the Tribunal, was only on matters related to the division or determination of boundaries; claims to occupy or work land; and trespass to land. The Land Disputes Tribunal did not have jurisdiction to issue declaratory orders on the ownership of land and neither did it have jurisdiction to determine disputes revolving around ownership of land. It could not issue orders compelling the issuance of title deed as it did in this case.

6. I do not think it is necessary for me to say more, particularly given the fact that the State Law Office for the respondent, has conceded to this Motion. I allow the application herein and quash the proceedings of the Bahati Land Disputes Tribunal in case No. 181 of 2010. I also quash the proceedings of Nakuru Chief Magistrate's Court LDT case No. 7 of 2010 and further prohibit the Chief Magistrate's Court at Nakuru from adopting the said award.

7. I would have awarded costs to the applicant but the Tribunal is defunct. Each party will therefore bear his/her own costs.

It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 23<sup>rd</sup> day of April 2015.**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**

**In presence of : -**

**Mr Waiganjo for applicant**

**Ms Kariuki for respondent**

**Emmanuel Juma: Court Assistant**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT AND LAND COURT**

**AT NAKURU**