



REPUBLIC OF KENYA



**Njuguna v Republic & 5 others (Civil Appeal 23 of 2016)  
[2024] KECA 1861 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KECA 1861 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CIVIL APPEAL 23 OF 2016  
MA WARSAME, SG KAIRU & FA OCHIENG, JJA  
DECEMBER 20, 2024**

**BETWEEN**

**JAMES MWANIKI NJUGUNA ..... APPELLANT**

**AND**

**REPUBLIC ..... 1<sup>ST</sup> RESPONDENT**

**DISPUTES TRIBUNAL, KIPIPIRI DIVISION ..... 2<sup>ND</sup> RESPONDENT**

**NYAHURURU SENIOR PRINCIPAL MAGISTRATE'S COURT .... 3<sup>RD</sup>  
RESPONDENT**

**LAND REGISTRAR, NYANDARUA DISTRICT ..... 4<sup>TH</sup> RESPONDENT**

**SAMUEL GACHAU MAINA ..... 5<sup>TH</sup> RESPONDENT**

**GRACE WANJIKU NJAU ..... 6<sup>TH</sup> RESPONDENT**

*(Being an appeal from the Judgment of the Environment and Land Court of Kenya at Nakuru (Munyao Sila, J.) dated 10th May, 2016 in ELC Cause No. 102 of 2011)*

**JUDGMENT**

1. In this appeal, the appellant James Mwaniki Njuguna has challenged the judgment of the Environment and Land Court (ELC) (Munyao Sila, J) delivered on 10<sup>th</sup> May 2016. In that judgment, the ELC quashed by an order of Certiorari an Award of the Kipipiri Lands Tribunal made on 3<sup>rd</sup> June 2011 in Land Dispute Tribunal Case No. 5 of 2011 and all subsequent orders including a decree of the Magistrate's court recognising that Award and the appellant's title was in respect to property known as Nyandarua/Malewa/573 issued to the appellant pursuant to the tribunal Award. The ELC also ordered the Land Registrar, Nyandarua, to have the title in respect to the said property revert to Samuel Gachau Maina, the 5<sup>th</sup> respondent.



2. Based on the record, the background is that the appellant instituted a claim against Samuel Gachau Maina (Maina) before the Kipipiri Land Dispute Tribunal (the Tribunal) being Case No. 5 of 2011 seeking to compel Maina to transfer to him properties known as title numbers Nyandarua/Malewa/572 and 573. It was his case that Maina agreed to sell the said properties comprising 50 acres to him for the price of Kshs. 2,783,000.00 based on a cost of Kshs.55,000.00 per acre. He pleaded with the Tribunal to grant him possession of land equivalent to the purchase price he had paid (something akin to Quantum Meruit) which he asserted was equivalent to 22.5 acres.
3. In its ruling dated 3<sup>rd</sup> June 2011, the Tribunal ruled in the appellant's favour that the title deed in respect of "Nya/Malewa/573" "which is 16 acres", "be dissolved and transferred absolutely" to him; that "Nya/Malewa/572" "be sub-divided into two portions and 6.4 acres be transferred to the purchaser Mr. James Mwaniki Njuguna"; that the appellant be given a total of 22.4 acres from "Nya/Malewa/572 & 573" "since he had paid an amount of money equivalent to 22.4 acres."
4. In the same ruling, the Tribunal requested the executive officer to execute the whole process and "the District Land Registrar and the District Land Surveyor to dissolve the said titles and issue new title deeds to the seller Mr. Samuel Gachau Maina and also to the purchaser Mr. James Mwaniki Njuguna." The ruling further provided that "the panel of elders have ruled in the absence of the objector Mr. Samuel Gachau Maina after having been summoned three times without avail."
5. The appellant then applied before the Principal Magistrate's Court at Nyahururu, being Land Dispute No. 13 of 2011, for the Award to be adopted as a judgment of the court. On 16<sup>th</sup> August 2011, that court adopted the Award as a judgment of the court and issued a decree in accordance with the Award.
6. Soon thereafter, by an application dated 23<sup>rd</sup> September 2011 Maina applied to the High Court at Nakuru, being Judicial Review Case No. 102 of 2011 for leave to commence judicial review proceedings for the reliefs of prohibition to stop the Nyahururu Senior Principal Magistrate's Court from adopting the Award as a judgment; certiorari to quash the Award; and an order for the leave to operate as stay of proceedings before the Magistrate's Court.
7. By an order given on 26<sup>th</sup> September 2011, the High Court at Nakuru (W. Ouko, J (as he then was)) granted Maina leave to commence judicial review proceedings within 21 days and at the same time ordered that the leave granted would operate as a stay of proceedings of the said Land Dispute Case No. 13 of 2011 before the Magistrates Court.
8. Maina subsequently filed the substantive motion before the High Court dated 14<sup>th</sup> October 2011 seeking the reliefs to which we have referred.
9. During the pendency of the judicial review proceedings before the High Court, the appellant entered into an agreement for sale dated 3<sup>rd</sup> January 2012, by which he sold the property known as Nyandarua/Malewa/573 to Grace Wanjiku Njau for a price of Kshs. 3,500,000.00. The Judicial Review Motion was amended to include the Land Registrar Nyandarua District as the 3<sup>rd</sup> respondent and the said Grace Wanjiku Njau as an interested party.
10. The essence of Maina's case before the High Court was that he was never served with the Statement of Claim before the Tribunal contrary to Section 3(5) of the repealed Land Disputes Tribunal Act; that no summons or hearing notice was served on him; that the Tribunal violated the rules of natural justice; and that the Tribunal did not have jurisdiction. The application was heard before Munyao Sila J. culminating in the impugned judgment delivered on 10<sup>th</sup> May 2016 in favour of Maina.
11. Aggrieved, the appellant lodged the present appeal.



12. During the hearing of the appeal before us on 10<sup>th</sup> June 2024, Mr. Gakuhi Chege, learned counsel, appeared for the appellant. There was no appearance for the Attorney General (representing the 1<sup>st</sup> to 4<sup>th</sup> respondents) and for the 6<sup>th</sup> respondent. Learned counsel Mr. D. K. Wanyoike appeared for the 5<sup>th</sup> respondent. Counsel for the appellant relied on the appellant's written submissions dated 5<sup>th</sup> June 2024 while counsel for the 5<sup>th</sup> respondent relied on written submissions dated 29<sup>th</sup> May 2024.
13. It was submitted for the appellant that the learned Judge erred by quashing the decree of the Magistrate's Court without a proper prayer or pleadings to support that order and that the Judge thereby acted without jurisdiction; that in the same vein the Judge erred by cancelling the appellant's title to the property without any supporting pleadings and in contravention of the law.
14. It was submitted further that the judge erred: by equating an order for a stay of proceedings with an order of stay of execution; holding that the appellant's title was irregularly obtained without evidence; in granting orders which had not been sought at the leave stage; allowing parties who had not been properly joined in the proceedings, specifically the Land Registrar, to participate in contravention of procedural rules; and considering the merits of the case in judicial review proceedings instead of focusing on the process.
15. Moreover, it was submitted, once a tribunal award is adopted it becomes a decree and stands on its own and any challenge to the decree must be made separately. In support the decision in the case of Republic -vs- Chairman, Kajiado Central Land Tribunal & 2 Others Ex-Parte Timaiyo Kitarar (2012) was cited.
16. Counsel for the 5<sup>th</sup> respondent submitted that the appeal is devoid of any merit and should be dismissed with costs; that the flaws in the Award are beyond redemption as the Tribunal acted outside its mandated powers, rendering its decision void from the outset. In that regard reference was made to the decisions in Joki Kinyua vs. Mathira East Land Dispute Tribunal & 3 Others (2015) eKLR, where the court determined that tribunals lack the authority to order land subdivision or registration in an individual's name; and the decision of this Court in Jotham Amunavi vs. The Chairman Subatia Division Land Disputes Tribunal & Enos Kenyani Civil Appeal No. 256 At 2002 where an award of a tribunal was nullified for exceeding its powers under the Land Disputes Tribunal Act of 1990.
17. Counsel for the 5<sup>th</sup> respondent concluded by urging the Court to uphold the decision of the ELC on the basis that the Award was void from the outset as the reliefs it granted exceeded its mandate and all subsequent proceedings are void.
18. We have considered the appeal, the submissions and authorities cited. In our view, the overarching issue is whether the ELC erred in concluding that the Award was ultra vires and that the Tribunal lacked jurisdiction in the matter. Related to that is the question of the effect of the adoption of the Award as a judgment of the Magistrate's court and whether the same was liable to be set aside.
19. We begin with the question of jurisdiction. Under Section 3(1) of the since repealed Land Disputes Tribunal Act, the Land Disputes Tribunal was empowered to hear cases of a civil nature involving a dispute as to the division of, or the determination of boundaries to land, including land held in common; a claim to occupy or work land; or trespass to land. Was the claim by appellant and the orders granted by the Tribunal within that mandate? The relevant part of the appellant's Statement before the tribunal stated as follows:

“I have accused Mr. Samuel Gachau Maina for having sold a piece of land to me and have not transferred the same to me. The said plot No Nya/Malewa/572 & 573 amounts to a



total acreage of 50 acres which we had agreed at a cost of Kshs. 55,000 per acre totalling to Kshs. 2,783,000.”

20. He then narrated in the statement what transpired in connection with that agreement and then made his plea before the tribunal thus:

“I plead to the tribunal to grant me possession of land equivalent to the money I paid under our sale agreement which is equivalent to 22.5.”

21. The Tribunal, in its ruling or award ordered “the title deeds plot No. Nya/Malewa/573 be dissolved and transferred absolutely to Mr. James Mwaniki Njuguna”; and that title deed plot No. Nya/Malewa/572 be sub-divided and 6.4 acres be transferred to the appellant.

22. In concluding that the Tribunal did not have jurisdiction in the matter, the learned Judge of the ELC stated that the dispute did not fall within the boundaries of Section 3(1); that the matter involved a claim for land based on an agreement for sale and was tantamount to a claim for specific performance before pronouncing that:

“...the dispute was outside the jurisdiction of the Kipipiri Land Dispute Tribunal and the proceedings and award are therefore ultra vires Section 3 of the Land Disputes Tribunal Act.”

23. That pronouncement is in consonance with the decision of this Court in the case of Joseph Malakwen Lelei & Judetheus Kiplagat Malakwen vs. Rift Valley Land Disputes Appeals Committee, Principal Magistrate Kapsabet & Veronica Chebichii Korir (Civil Appeal 82 of 2006) [2014] KECA 539 (KLR) where it was stated:

“...the law on this issue is settled and we do not need to belabour it. Section 3 of the Land Disputes Tribunal Act (repealed) gives jurisdiction to the Land Disputes Tribunal to handle claims in the following matters only:

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 on in common,
- b. A claim to occupy, or work land or
- c. Trespass to land.”

Evidently the above provision does not include jurisdiction to deal with issues of determination of title to or ownership of registered land, or the determination of a Trust in favour of a party, which in essence was the basis of the 3<sup>rd</sup> respondent’s claim.”

24. This Court in that case went on to say that it is trite that where a court or tribunal takes upon itself to exercise a jurisdiction which it does not possess, its proceedings and decisions are null and void; and that it then follows that every other proceeding, decision, or award that results from such a process must be construed as a nullity. See *Macfoy vs. United Africa Company Limited* [1961] 3 All ER 1169; *Re Continental Credit Finance Limited* [2003] 2 EA 399; *Owners of Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Limited* (1989) KLR 1.

25. That pronouncement, in our view disposes of this appeal in its entirety with the result that the appeal must fail.



26. For completeness however, there is the issue relating to the decision in Republic. vs. Chairman, Kajiado Central Land Tribunal & 2 others, Ex parte Timaiyo Kirtari, Misc Civil Case No. 4 of 2012 [2012] KEHC5750 (KLR) which was cited for the argument that the nullification of the decision of the tribunal could not, per se, affect the judgment of the Magistrate’s Court adopting the tribunal award. In that case which involved an application for Judicial review to quash an award of the Land Dispute Tribunal, the learned Judge (Asike-Makhandia, J, (as he then was) was clear that the tribunal in that case “had no jurisdiction to entertain the claim” although the applicant therein had made out a case for the grant of an order of certiorari. In doing so, the Judge stated:

“Clearly, the claim before the 1<sup>st</sup> respondent was about a land deal gone sour. There was a sale agreement between the applicant and the 2<sup>nd</sup> respondent. It never went through. The applicant having received part purchase price decided unilaterally to rescind the agreement and refund the part purchase price he had received. The 2<sup>nd</sup> respondent would hear none of the above, hence the claim with the 1<sup>st</sup> respondent to compel him to go through with the transaction. Section 3(1) of the Land Disputes Tribunal Act, sets out limitations to the jurisdiction of the 1<sup>st</sup> respondent. It was meant to hear cases of civil nature concerning- The division of, or the determination of boundaries to land. A claim to occupy or work land, or Trespass to land

The 2<sup>nd</sup> respondent’s claim did not fall within any of these perimeters. His claim had to do with the contract of sale of land, that was rescinded and the consequences flowing from such breach. The 1<sup>st</sup> respondent has no jurisdiction whatsoever to deal with issues of sale of land.”

27. There is resemblance in the facts of that case with the present one. However, that case does not stand for the proposition advanced by the appellant that the judgment of the Magistrate’s Court adopting the award was out of reach of judicial review. The reason the application in that case failed is stated by the Judge thus:

“Regrettably, however, the application must fail on other grounds. The orders sought to be issued are aimed at a person or entity that is not party to these proceedings. Judicial review orders are prerogative and in the form of directions. They ought therefore to be directed to a specific body or person who is a party to the proceedings for compliance and not by proxy. In this case, the proceedings sought to be quashed by an order of certiorari are in the province of the Senior Resident Magistrate’s Court at Kajiado. Yet this court has not been made a party to these proceedings. It therefore follows that the orders sought cannot issue. Even if it was to issue, such an order will be in vain. It is trite law that court orders do not issue in vain. The Senior Resident Magistrate’s Court, Kajiado should have been enjoined in this suit so that the orders of certiorari and prohibition could properly issue against it. In its absence I do not see the efficacy of such orders even if they were to issue.” [Emphasis added]

28. Unlike in that case, in the present case, Nyahururu Senior Principal Magistrate’s Court was enjoined in the Judicial Review application. It is therefore distinguishable and inapplicable to the present case.

29. All in all, the appeal fails and is hereby dismissed with costs to the 5<sup>th</sup> respondent only being the only respondent that participated in the appeal.

**DATED AND DELIVERED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2024.**

**M. WARSAME**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCIArb**

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**JUDGE OF APPEAL**

**F. OCHIENG**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

