



**No.51/2014**

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**ELC CASE NO.412 OF 2009**

**IN THE MATTER OF AN APPLICATION BY PETER MANZI AND KAIYU MANZI FOR AN ORDER OF CERTIORARI**

**AND**

**IN THE MATTER OF THE DISTRICT LAND DISPUTES TRIBUNAL SITTING AT MUTONGUNI DIVISION KITUI DISTRICT UNDER THE LAND DISPUTES TRIBUNAL ACT NO. 18 OF 1990**

**THE REPUBLIC ..... APPLICANT**

**VERSUS**

**THE DISTRICT LAND DISPUTES TRIBUNAL, KITUI ..... RESPONDENT**

**AND**

**JACKLINE KAVUTHA .....INTERESTED PARTY**

**EXPARTE .....1. PETER MANZI**

**2. KAIYU**

**MANZI**

**R U L I N G**

1. In an undated award filed in Kitui Resident Magistrate’s Court on 11.11.09 the 2<sup>nd</sup> Respondent ordered a relief in nature of specific performance in a sale agreement between 2 deceased persons who were represented by 2<sup>nd</sup> Applicant and 1<sup>st</sup> Respondent. The tribunal ordered 4 acres of Mutonguni/3241 to be transferred to Jackline Kavutha Muasya 1<sup>st</sup> Respondent. The suit land was and is owned by the 1<sup>st</sup> Applicant Peter Manzi who was not a party to the tribunal dispute/proceedings.
2. The aforesaid decision by the 2<sup>nd</sup> Respondent prompted the 1<sup>st</sup> Applicant to institute the instant

matter where in motion dated 5.8.2010 sought an order of Judicial Review of certiorari to quash the said decision. The 1<sup>st</sup> Applicant complaint is that though he was not a party to the proceedings before the 2<sup>nd</sup> Respondent, the decision was made to deprive him 4 acres without him being accorded a hearing contrary to rules of natural justice.

3. Further the dispute was heard and prosecuted by the representatives of the deceased parties without any having any grant to accord them locus to do so. This was a fatal illegality according to the 1<sup>st</sup> Applicant. The Applicants also avers that the tribunal 2<sup>nd</sup> Respondent entertained a dispute arising from alleged sale of land transaction and purported to order specific performance which is outside the tribunal mandate under Section 3 of LDT Act. This renders the entire decision to be null and void. The applicants argue.
4. Further the Applicants argue that the agreement being enforced was allegedly entered into in 1993 and was being enforced in 2011 while it was long time barred thus bad in law. The Applicants have cited the following authorities to support their submissions:

1. Kakamega HCMISC 102/06 – KABRAS LDT VS. SIMIYU.
2. Eldoret HCMISC 43/06 – KEIYO LTD VS. TABYOTIN.
3. Nakuru HCMISC 314/04 – NYAHURURU LDT VS. MAINA & ANOTHER.
4. Kisumu HCMISC 17/09 – NIMUI & ANOTHER VS. KISUMU LDT AND ANOTHER.
5. The Respondents were served with the application but have failed to file replying affidavit nor attend court to defend the application. The proceedings before the 2<sup>nd</sup> Respondent shows that the parties were Jackline kavutha as claimant now 1<sup>st</sup> Respondent in the instant matter and Kaiyu Manzi Objector and 2<sup>nd</sup> Applicant in the instant matter. The 1<sup>st</sup> Applicant owner of the land was not invited to the proceedings nor was he accorded a hearing yet the verdict ordered 4 acres of his land to be transferred to the 1<sup>st</sup> Respondent.

In **CIVIL APPEAL NO.39/013 at Nyeri SAMSON MAKUNGI VS. SAMSON KIRERA**; The court held that;

***“The right to be heard as well as the hearing of all parties to a dispute is the cornerstone of natural justice”.***

**LEIYAGU VS. IEBC & 2 OTHERS Civil Appeal No.18/213 Nyeri**. The court reiterated that;

***“The right to a hearing has always been well protected right in our Constitution and is also the cornerstone of rule of law”.***

In the Repealed constitution Section 77 (9) the right to a fair hearing was entrenched as a fundamental right. The failure to accord the 1<sup>st</sup> Applicant a hearing before depriving him 4 acres was a fundamental breach of rules natural justice and fundamental right of the due process entrenched in the Constitution then and now.

6. That breach alone vitiates the award and renders the same null and void. Though superfluous, it is worth noting that, the claim was also outside the jurisdiction of the tribunal as it was rooted on sale agreement which is outside the purview of Section 3 of LDT Act. Further the fact that the disputants before the tribunal purported to represent deceased persons without being appointed as legal representatives, the proceeds also were irregular.
7. In the premises, the court makes the following orders;

1. The Motion dated 5.8.2010 is allowed in terms of prayers 1 and 2.

**Signed and Delivered at Machakos, this 19<sup>th</sup> day of December, 2014.**

**CHARLES KARIUKI**

**JUDGE**



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