



**Sang v Arusei & another (Civil Appeal 48 of 2021)
[2023] KEELC 16780 (KLR) (13 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16780 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
CIVIL APPEAL 48 OF 2021
JM ONYANGO, J
APRIL 13, 2023**

BETWEEN

HARON BARCHOK SANG APPELLANT

AND

KIMUTAI ARUSEI 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

JUDGMENT

1. The appeal herein arises from the decision of the Uasin Gishu Land Disputes Tribunal (now repealed) delivered on October 18, 2010. The said appeal was initially filed at the Rift Valley Provincial Appeals Committee and it was transferred to this court pursuant to an order issued on August 2, 2019 following the repeal of the *Land Disputes Tribunal Act*.
2. The 1st respondent filed a complaint at the Uasin Gishu Land Disputes Tribunal alleging that he had entered into a sale agreement with the appellant for the sale of land parcel number Turbo East/Leseru Block 1 (Cheptabach/106) measuring 4 acres for a consideration of Kshs 428,500 after which he was given vacant possession of the land. The appellant then moved to a parcel of land he bought at Ndalat settlement scheme but after a period of two years, he moved back to the parcel that he had sold to the 1st respondent and occupied a portion thereof without the 1st respondent's consent.
3. After hearing both parties, the tribunal arrived at the decision that the 1st respondent be awarded the 4 acres comprised in land parcel number Turbo East/Leseru Block 1 (Cheptabach/106). The tribunal further directed the district surveyor to confirm the boundaries of the said 4 acres and the Land Control Board was directed to transfer the 4 acres to the 1st respondent.
4. Being dissatisfied with the award of the tribunal, the appellant lodged an appeal at the Rift Valley Provincial Land Disputes Appeals Committee on November 25, 2010 citing the following grounds:



- i. That the tribunal erred when it awarded the respondent 4 acres out of the appellant's land parcel No Turbo East/Leseru Block 1 (Cheptabach/106 contrary to the evidence available.
 - ii. That the tribunal erred in arbitrating and handling on a parcel of land which is duly registered in my name (sic)
 - iii. That the tribunal erred in not considering that the transaction by the appellant and the respondent had failed to materialize.
 - iv. That in the premises the tribunal erred in finding that the appellant had sold 4 acres to the respondent when in fact they had agreed to exchange their parcels which did not materialize upon the appellant inspecting the respondent's parcel of land.
 - v. That the tribunal was openly biased in favour of the respondent and did not afford a fair hearing to the appellant despite the fact that the appellant wanted to bring more witnesses in support of his claim.
 - vi. That the tribunal erred by failing to accept documentary evidence from the appellant and also ignored to look at the title deed or a search certificate showing the appellant as the registered owner.
5. Upon the promulgation of the 2010 *Constitution*, the *Land Disputes Tribunal Act* was repealed before the appeal could be heard by the Provincial Appeals Committee. The appeal was subsequently transferred to this honourable court pursuant to an order dated November 19, 2021.
 6. The court directed that the appeal be disposed of by way of written submissions and both parties filed their submissions.

Appellant's Submissions

7. Learned counsel the appellant submitted that the Uasin Gishu Land Disputes Tribunal lacked the jurisdiction to deal with the dispute herein as it touched on title to registered land. He referred to section 3(1) of the *Land Disputes Tribunal Act* which provides that that the tribunal could hear disputes relating to determination of boundaries to land, a claim to work or occupy land or trespass to land. It was his contention that since the dispute herein related to ownership of land the same could only be handled by the High Court. He submitted that the award of the tribunal required the appellant to surrender his title for sub-division which would affect registered title and this fell outside the jurisdiction of the tribunal. He relied on the case of *Joseph Malakwen Lelei & another v Rift Valley Land Disputes Appeals Committee & 2 others* [2014] eKLR where the court elaborated the provisions of section 3(1) of the *Land Disputes Tribunal Act* and held that the said provision did not include jurisdiction to deal with issues of determination of title to or ownership of registered land.
8. He further relied on the case of *Jotham Amunavi v Chairman Sabatia Division Land Disputes Tribunal & another* CA No 256 of 2002 at Kisumu where the court held as follows:

“If the implementation of the decision of the tribunal entails the sub-division of the suit land into two (2) parcels opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half (1/2)acre, it is clear that the proceedings before the tribunal related to both title to land and to beneficial interest in the suit land and such a dispute is not within the provision of section 3(1) of the Land Disputes tribunal Act as such a dispute can only be tried by the High Court or by the Resident Magistrate's Court where such latter court has jurisdiction”



9. On whether the appeal had been filed out of time, counsel submitted that it was filed within time. It was his contention even though it was not clear whether the 30 days provided in the Land Disputes Act was inclusive of weekends and public holidays he was of the view that in accordance with section 57 (a), (b) and (c) of the *Interpretation and General Provisions Act* 1956 (Rev 2012), Sundays, public holidays and all official non-working days were excluded during computation of time. He further submitted that even where an appeal is filed out of time the court can exercise its discretion under section 3A to admit the appeal out of time.

1st*Respondent's Submissions

10. It was submitted for the 1st respondent that the decision of the tribunal having been rendered on October 18, 2010, the appeal which was lodged before the Provincial Land Disputes Appeals Committee on November 25, 2010 was filed 37 days after the date of the tribunal's decision and was therefore out of time. Learned counsel for the 1st respondent relied on the case of *Nyaga Muchiri & another v Thomas Njiru Kanyaunga & another* [2008] eKLR for the proposition that where the law provides for a time within which to do a thing or an act or make a decision, the court has neither the jurisdiction nor power to extend time unless the power to do so is provided in the relevant law. He submitted that section 8 of the *Land Disputes Tribunal Act* does not grant the court any discretion to extend time within which to file an appeal.
11. Regarding the question of jurisdiction, counsel submitted that the tribunal had the requisite jurisdiction to hear and determine the matter as section 3 of the *Land Disputes Tribunal Act* did not limit the disputes to be handled by the tribunal to those relating to unregistered land. He relied on the cases of *Republic v Nyandarua Land Disputes Tribunal & 2 others ex-parte Gitau Gichure* [2005] eKLR and *Masagu Ole Koitalel Naumo v Principal Magistrate Kajiado Law Courts & another* [2014] eKLR for the proposition that the tribunal was precluded from making determinations with respect to title to land but not from dealing with registered land.
12. It was further submitted that the decision of the tribunal was merited as the parties both agreed on the terms of the agreement for sale of land and the only issue that arose is that the appellant wanted to go back and occupy a portion of the land he had sold to the 1st respondent. He was of the view that the decision of the tribunal was intended to enforce the terms of the agreement and was therefore correct.

2nd Respondent's Submissions

13. On behalf of the defunct Uasin Gishu Land Disputes Tribunal, learned senior litigation counsel from the office of the Attorney General submitted that the tribunal acted within its jurisdiction in accordance with the provisions of section 3(1) of the *Land Disputes Tribunal Act* (repealed) He submitted that the issue of ownership of land was not in issue in the proceedings before the tribunal. He was of view that the issue before the tribunal was purely one of trespass to land and the fact that the appellant had failed to transfer the land he sold to the 1st respondent and therefore the issue of sub-division did not arise.

Analysis and Determination

14. Having considered the proceedings of the Land Disputes Tribunal, memorandum of appeal and rival submissions the following issues fall for determination:
- i. Whether the appeal was filed out of time



- ii. Whether the Land Disputes Tribunal had jurisdiction to hear and determine the dispute between the appellant and the 1st respondent

Section 8(1) of the [Land Disputes Tribunal Act](#) (repealed) provides as follows:

“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”

15. The tribunal rendered its decision on October 18, 2010 while the appeal was filed on November 25, 2010 which is 37 days after the date of the decision. Although counsel for the appellant has submitted that Sundays, public holidays and all official non-working days are excluded during computation of time, this is not borne out by the provisions of section 57 of the [Interpretation and General Provisions Act](#). The said section provides as follows:

Section 57

“In computing time for the purposes of a written law, unless the contrary intention appears –

- (a) A period of days from the happening of an event or the doing of an act or thing shall be deemed to be exclusive of the day on which the event happens or the act or thing is done;
 - (b) If the last day of the period is Sunday or a public holiday or all official non-working days which days are in this section referred to as excluded days) the period shall include the next following day not being an excluded day;
 - (c) Where an act or proceeding is directed or allowed to be done or taken on a certain day, then if the day happens to be an excluded day the act or proceeding shall be considered as done or taken in due time if it is done or taken on the next day afterwards, not being an excluded day”
16. There is no indication that the 30th day after the October 18, 2010 fell on a Sunday or public holiday and therefore the above section is not applicable. Furthermore, the [Land Disputes Tribunal Act](#) (repealed) has no provision for extension of time. This position was reaffirmed in the case of [Albert Chinge Wabule v Festo Mamuli Njiule](#) (2005)eKLR where the court held as follows:

“Under section 8(1) of the Land Disputes Tribunal Act No 18 of 1990, the legislature did not donate to this court any jurisdiction or discretion to extend time to appeal unlike in other civil cases emanating from subordinate courts. In my humble view this court has no jurisdiction to extend time to appeal under section 8(1) of the Land Disputes Tribunal Act. The legislature had in its mind the view that land disputes should be heard and determined expeditiously without involving the courts”

17. It is therefore my finding that the appeal was filed out of time thus rendering it incompetent. Even though this ground is sufficient to dispose of the appeal I will also examine the second issue touching on the jurisdiction of the tribunal.
18. The jurisdiction of the tribunal is provided for in section 3 of the [Land Disputes Tribunal Act](#) which stipulates as follows:

“Subject to this Act, all disputes 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”.

19. In the instant case, the dispute before the tribunal was that the appellant had failed to transfer the parcel of land he sold to the 1st respondent and even after giving him vacant possession, he went back and encroached thereon. After hearing both parties and their witnesses, the tribunal rendered its decision as follows:

- 1) “The claimant Kimutai Arusei is awarded four (4) acres in plot No Turbo East/Leseru Block 1 (Cheptabach/106.
- 2) The district surveyor to confirm measurement and boundaries of the said 4 acres.
- 3) The Land Control Board to transfer 4 acres to Kimutai Arusei
- 4) Costs of the case awarded to the claimant”

20. Although the respondents have submitted that the dispute did not relate to ownership of land, it is clear that one of the reliefs sought by the appellant was that the 1st respondent be ordered to transfer the plot to him. In granting the prayer for transfer the tribunal made a determination on ownership without the requisite jurisdiction. In arriving at this finding I am guided by the case of [*Jotham Amunavi v Chairman Sabatia Division Land Disputes Tribunal & another*](#) CA No 256 of 2002 at Kisumu where the court held as follows:

“If the implementation of the decision of the tribunal entails the sub-division of the suit land into two (2) parcels opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half (1/2) acre, it is clear that the proceedings before the tribunal related to both title to land and to beneficial interest in the suit land and such a dispute is not within the provision of section 3(1) of the Land Disputes Tribunal Act as such a dispute can only be tried by the High Court or by the Resident Magistrate’s Court where such latter court has jurisdiction”

21. Be that as it may, I have already held that the appeal was filed out of time and it is therefore incompetent. It has also been submitted by counsel for the 1st respondent that the decision of the tribunal which was adopted by the court as a judgment of the court on November 18, 2010 was implemented more than 10 years ago as there was no stay of execution. The appellant is guilty of laches and he has only himself to blame. In the final analysis I have no choice but to dismiss the appeal with costs to the 1st respondent.

DATED SIGNED AND DELIVERED AT ELDORET THIS 13TH DAY OF APRIL 2023

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J.M ONYANGO

JUDGE

In the presence of;

1. Mr. Kenei for the 1st Respondent



2. Mr. Odongo for the 2nd Respondent

3. No appearance for the Appellant

Court Assistant: Mr.Oniala

