



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC APPEAL NO. 10 OF 2018

MARGARET WANJIRU.....1ST APPELLANT

ELIZABETH MUTHONI.....2ND APPELLANT

MIKE NDIRANGU.....3RD APPELLANT

-VERSUS-

JOEL KINYANJUI KIGO.....1ST RESPONDENT

JOSEPH N. KIGO.....2ND RESPONDENT

JAMES NGUGI KIGO.....3RD RESPONDENT

(Being an Appeal against an award of Kwanza Land Disputes Tribunal and adopted as a judgment of the court on 12/10/2017 vide Kitale CMC Case No. 63 of 2007)

BETWEEN

MARGARET WANJIRU.....1ST APPELLANT

ELIZABETH MUTHONI.....2ND APPELLANT

MIKE NDIRANGU.....3RD APPELLANT

-VERSUS-

JOEL KINYANJUI KIGO.....1ST RESPONDENT

JOSEPH N. KIGO.....2ND RESPONDENT

JAMES NGUGI KIGO.....3RD RESPONDENT

JUDGMENT

THE BACKGROUND

1. The Appellants challenged the award of Kwanza Disputes Tribunal which was issued on an unknown date. It was adopted as the judgment of the Chief Magistrate's Court at Kitale on 12/7/2007 in **CMC Land Case No. 63 of 2007**. The appellants being dissatisfied with the Tribunal's Award preferred an appeal to the **Rift Valley Appeals Committee** vide Appeal No. 108 of 2007. At the time of filing the appeal, the operative law was **the Land Disputes Tribunal Act, Act. No. 18 of 1990** (now repealed) which permitted the procedure. Upon the 2010 Constitution and the subsequent enactment of the Environment and Land Act in 2011, **Act No. 18 of 1990** was repealed, rendering void all the bodies created thereunder hence the Rift Valley Appeals Committee. Consequently, the power to determine disputes of this nature was transferred to the Environment and Land Court (ELC) and all the disputes pending in the respective forums then were to be transferred to this Court. On 26/7/2018 this Court issued an order dated 26/7/2018 for the transfer and disposal of this Appeal from the Rift Valley Provincial Appeals Committee.

THE APPEAL

2. On **14/6/2021** the Appellants filed their Record of Appeal dated **11/6/2021**. The Memorandum of Appeal contained four grounds of the appeal. These were, first, that the Land Disputes Tribunal had no jurisdiction to entertain the claim because the land which was the subject of the award was solely registered in the name of the 3rd appellant and a title issued thereto as **Trans-Nzoia/Kaisagat/202**; second, the Title No. **Trans-Nzoia/Kaisagat/202** was awarded to the 3rd appellant by the Kitale High Court in Court Succession Cause No. **30 of 2005** upon the distribution of the Estate of the Late Douglas Kigo Ndirangu; third, the Kwanza Land Disputes Tribunal sat as an appeal court against the judgment of the High Court Succession Cause No. **30 of 2005** contrary to the law; and four, Disputes Tribunal erred in hearing the dispute *ex-parte* and did not give the appellants an opportunity to be heard.

3. The appellants urged this court to allow the appeal, set aside the award of Kwanza Land Disputes Tribunal and dismiss the Respondents' claim with costs both in this appeal and the lower court.

SUBMISSIONS

4. The Court directed that the Appeal be disposed by way of written submissions. The Appellants filed theirs dated **7/7/2021** on **9/7/2021**. There was no record of the Respondents having filed theirs. Regarding the first ground of Appeal, learned counsel for the Appellants argued that the tribunal lacked jurisdiction to determine a claim relating to registered land. He submitted further that the jurisdiction of the now defunct Land Disputes Tribunal was derived from **Section 3 (1)** of the Act (now repealed). He argued further that the land in dispute before the Tribunal was registered under the 3rd Appellant's name. He submitted further that even before it was registered in the 3rd Appellant's name on **5/7/2007**, the title was already registered and in existence as at **24/1/1994** following the succession proceedings at Kitale High Court. The proceedings preceded the claim before the Tribunal. He summed it that for these reasons, the Land Disputes Tribunal of Kwanza area lacked jurisdiction to determine the dispute and its decision was ultra vires irregular. He relied on the Court of Appeal case of **M'Marete v Republic & 3 Others (2004) eKLR** in the case of **Christopher Wafula Mutoro v Richard Lordia Lokere (2019) eKLR**.

5. Regarding the second ground, counsel submitted that the Land Disputes Tribunal did not have the jurisdiction to hear and determine disputes arising from a Succession Cause. He stated that the suit land was the subject of Succession proceedings in **Kitale High Court Succession Cause No. 30 of 2005** wherein both the Appellants and Respondents participated. At the conclusion of the succession matter the suit land was awarded to the 3rd Respondent. He pointed the Court to the confirmation of grant dated **2/11/2006** which was part of the record. He submitted further that the Succession Cause preceded the claim in the Land Disputes Tribunal and by the Respondents lodging the claim in the Tribunal it amounted to an appeal against the decision of the Succession Court being urged before the Land Disputes Tribunal. The decision of the Tribunal purported to vary the decision of the Succession court yet it had no jurisdiction to do so. He argued that the Respondents should have appealed against the decision of the judge in the Succession proceedings if they were dissatisfied instead of laying a claim over the suit land. He then concluded that the Tribunal acted in excess of its jurisdiction. He relied on the case of **Republic v Chairman Keiyo Division L.D.T & Another Ex parte Tabyotin Kabon Ego (2008) eKLR**.

6. On the third ground of appeal it was submitted that the appellants were denied the right of being heard at the Tribunal hence had no their right to a fair trial was violated. He submitted that, first, they were neither summoned to the Tribunal for hearing nor notified of the its proceedings. Second, they were never served with summons as required by **Section 4 (4)** of the Land Disputes Tribunal Act. Third, they were never invited to make their defence and the Tribunal made its final decision without hearing them. He relied on the case of **Republic v Chairman Keumbu Land Disputes Tribunal & 2 Others Ex parte Nicodemus Momanyi (2012) eKLR**.

7. Lastly, learned counsel argued that there was no evidence taken from either the Appellants or the Respondents in relation to the dispute. Therefore, he questioned the procedure applied by the Tribunal in arriving at its award. He urged this court to nullify the proceedings before the Tribunal by allowing the appeal.

ANALYSIS, ISSUES AND DETERMINATION

8. The Respondents neither cross-appealed not submitted on any points raised by the Appellants. Be that as it may, this Court is under the duty to determine the Appeal on its merits. I considered the grounds in the Memorandum of Appeal, the submissions on behalf of the Appellant, the case law relied on as well as the relevant statutes.

9. This being a first appeal, I am under duty to consider the evidence on record, evaluate it afresh and make my own finding about it. The role of this court as a first appellate forum was outlined by the Court of Appeal in the case of **Gitobu Imanyara & 2 others v Attorney General [2016] e KLR, where it held that;**

“An appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which this Court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.”

10. Similarly, in **Peters v Sunday Post Ltd [1958] EA 424**, as cited in **Jackson Kaio Kivuva v Penina Wanjiru Muchene (2019) eKLR**, it was held:

“Whilst an appellate court has jurisdiction to review the evidence to determine whether the conclusions of the trial judge should stand, this jurisdiction is exercised with caution; if there is no evidence to support a particular conclusion, or if it is shown that the trial judge has failed to appreciate the weight or bearing of circumstances admitted or proved, or had plainly gone wrong, the appellate court will not hesitate so to decide.”

11. Additionally, in *Abok James Odera t/a A.J Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates [2013] e KLR*, the court held that:

“This being a first appeal, we are reminded of our primary role as a first appellate court namely, to re-evaluate, re-assess and reanalyze the extracts on the record and then determine whether the conclusions reached by the learned trial Judge are to stand or not and give reasons either way.”

12. Having summarized and given my perspective of the power of this Court at this stage, I am of the view that the issues for determination in this Appeal were:

- a) *Whether the Land Disputes Tribunal had jurisdiction to hear and determine the dispute*
- b) *Whether the Land Disputes Tribunal violated the rules of natural justice with regard to the appellants*
- c) *What orders to issue, including costs?*

13. The issues are analyzed as hereunder:

- a) *Whether the Land Disputes Tribunal had jurisdiction to hear and determine the dispute*

14. The facts of the dispute before the Tribunal, as can be gleaned from the one-page decision of the Kwanza Land Disputes Tribunal Case No. **38 of 2006**, were that the dispute was in relation to land in Kaisagat S.F.T. area between Joseph N. Kigo and Joel Kinyanjui Kigo, Mike N. Kigo, James N. Kigo and Elizabeth M. Kigo. The specific Plot was named as **Plot 202**.

15. The now defunct Land Disputes Tribunal was established under **Section 4** of the Land Disputes Tribunal Act (now repealed). The Act limited the jurisdiction of magistrate’s court in certain cases relating to land. The cases were given in **Section 3** which referred them to the Tribunal. Thus, the Tribunal derived its jurisdiction from the **Section 3** of the **Act** which 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.”*

16. At the end of the impugned decision of the Tribunal, it concluded as follows, *“PANELS RULING:*

“From the evidence of the family meeting during the funeral of the late Douglas Kigo Ndirangu dated 1st November, 1994, Exhibit 1 the lawful owner of 5½ acres at Kaisagat plot No. 202 is Joseph Ndirangu.”

From the proceedings before the Tribunal and the “PANELS RULING”, the dispute concerned ownership of the suit land. The “Panel” actually awarded Joseph Ndirangu 5½ acres of Plot No. **202** Kaisagat. However, **Section 3** of the Act, as given above, did not confer jurisdiction on the Tribunal to adjudicate disputes over ownership of land.

17. Also, it is this Court’s view that that the Act did not confer the Tribunal with jurisdiction to hear and determine disputes relating to land registered under the Registered Land Act yet it did so. That was contrary to the law. I find so because I have analyzed the evidence attached to the Memorandum of Appeal, particularly the copy of the title in relation to the parcel of land **Trans Nzoia/Kaisagat/202** measuring approximately **4.05 Ha**. It shows that it was issued to Mike Ndirangu Kigo and Douglas Kigo Ndirangu on **24/01/1994**. For that reason, its decision was illegal and cannot be let to stand. I agree with the view of the court in the case of **M’Marete v Republic & 3 Others (2004) eKLR** where it was held that-

“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupancy or work the land, but a claim to ownership. Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under [the] Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction.”

18. The award of the Tribunal as well as the judgment of the Court following the adoption of the award, and the decree dated **12/10/2007** issued by the Court in Kitale Chief Magistrate’s CMC. **Kitale 63 of 2007** were therefore made in contravention of the provisions of the law and in error.

19. In regard to the second and third grounds of appeal, this Court was of the view that they were closely related hence would be determined as one and it did so. The documents in the record of Appeal particularly pages **4** and **37 to 40** and **41** and the entire record generally show that Land Parcel No. **Kaisagat/202** was the subject of the Kitale High Court vide Succession Cause **No. 30 of 2005**. The Certificate of Confirmation of Grant dated **2/11/2006** which forms **page 41** of the Record names the same parcel of land that the Tribunal determined ownership of. From the Certificate, the said parcel of land was referenced as **Trans-Nzoia/Kaisagat/202**. By the time the Tribunal handled the matter, title had already been issued pursuant to the Succession Cause. For this reason, I find that the Tribunal erred in determining not

only a dispute relating a matter which was a subject of the succession proceedings of the Succession Cause referred to Therefore, the third Ground of Appeal succeeds.

20. The fourth ground of Appeal is simple and straight forward. The Appellants complained and submitted that they were not accorded a hearing at the Tribunal, contrary to the rules of natural justice. The proceedings and award of the Tribunal do not show anywhere that the Appellants were called upon to and did give evidence in the proceedings before the Tribunal. That being so, it implies that the Appellants established to the required standard that they were not accorded a hearing hence their right to fair trial infringed. Thus, the fourth ground of appeal too succeeds.

21. In the final analysis, this Appeal succeeds in its entirety. The result is that the decision of the undated Kwanza Land Disputes Tribunal adopted as, and the Judgment of the Court in **Kitale CMCC No. 63 of 2007** on **12/10/2007** are hereby set aside and substituted with an order dismissing the respondents' claim over the suit land with costs to the Appellants both of the appeal and the lower court.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 26TH DAY OF JANUARY, 2022.

DR. IUR FRED NYAGAKA

JUDGE, ELC, KITALE.