



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NYERI**

**ELC APPEAL NO. 36 OF 2014**

**PHILIP KAMAU NGUGI ..... APPELLANT**

**VERSUS**

**ELIJA MUGO NJOROGE (Substituted as appointed legal**

**representative of Jane Wambui Njoroge (Deceased)..... RESPONDENT**

**GEORGE M. NDEGWA ..... INTERESTED PARTY**

**JUDGMENT**

**Introduction**

1. This appeal relates to an award of the Provincial Land Disputes Appeals Tribunal made on **11<sup>th</sup> December, 2008** in claim No. Thika 17 of 2005.
2. The award appealed from was as follows:-

**“RULING**

- (1) The case was heard and determined and the ruling was passed on **1<sup>st</sup> August, 2007**.
- (2) The judgment was attached which stated that the land belonged to Jane Wambui (now deceased).
- (3) Mr. Phillip Kamau who was the respondent will go to Nyakinyua Ltd and would be given alternative land.
- (4) This was agreed between Nyakinyua Ltd chairlady and the rest of the parties.”

3. The proceedings of **1<sup>st</sup> August, 2007** referred to in (1) above were as follows:-

**“Claim No. Thika 17/2005 (year)**

**In the matter of appeal between**

a) Jane Wambui Njoroge-Appellant

b) Phillip Kamau Ngugi-Respondent

Appeal committee

1. John Ndahi-Chairman

2. Simon Waita-Member

3. S.K Albert-Member

Decision of the committee

Having heard and considered the representation of all the parties (and their witnesses) and having considered all documents submitted to us, we hereby decide as follows:-

-The land in dispute is Ruiru/Ruiru East Block 2/1399-0,490 (size)

-Title for 2/1399 was double allocated:-

(i) Philip Kamau Ngugi (1988)

(ii) Jane Wambui Njoroge (1992)

Complainant is Philip Kamau Ngugi (Respondent)

Jane Wambui Njoroge was the Appellant.

Nyakinyua Investment Ltd the land company supports that legally Jane Wambui Njoroge is sole owner of property Ruiru/2/1399.

The land company accepts that Phillip Kamau Ngugi is at liberty to revert back to it for allocation of a parcel of land if he qualified or is entitled.

The District Tribunal unanimously resolved that the person issued with the first title in 1988 is Kamau Philip Kamau Ngugi.

The company chairperson testified to the panel that rightly Jane Wambui Njoroge owns Ruiru/2/1399.

-the past hearing of this case disclosed that Jane Wambui had developed the land in dispute.

Resolution

This case shall be heard on a date to be determined later when company directors shall be invited to attend the panel.

The hearing was on 07 day of 08 year 2007....”

4. Aggrieved by the aforementioned award/decision of the Appeals Tribunal, the appellant (Philip Kamau Ngugi) brought the current appeal on the grounds that the Appeals Tribunal lacked jurisdiction to hear and determine the matter which involves a dispute over title and ownership to land Reference No. Ruiru/2/1399; that the decision of the Appeals Tribunal is a nullity for contravening the provisions of **Section 3(1)** of the Land Disputes Tribunals Act, No.18 of 1990 (repealed) and **Section 159** of the Registered Land Act, Cap 300 (repealed). The appellant also contends that in arriving at the award, the

Appeals Tribunal disregarded the rules of natural justice (appellant contends that he was not heard before the award was made).

5. The appeal was disposed of by way of written submissions.

6. In the submissions filed on behalf of the appellant, reference is made to the provisions of **Section 3(1)** of the Lands Dispute Tribunal Act, No. 18 of 1990 and **Section 159** of the Registered Land Act, Cap 300 and submitted that the Appeals Tribunal did not have jurisdiction to entertain any claim touching on title to the disputed property. Further reference is made to the cases of **Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 others (2012) eKLR** and the celebrated case of **Owners of the Motor Vessel 'Lillian S' v. Caltex (Kenya) Ltd (1989)KLR 14.**

7. In the case of **Samuel Kamau Macharia** (*supra*) it was held:-

**“A court’s Jurisdiction flows from either the Constitution or Legislation or both. Thus, a court of law (tribunal) can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”**

8. In the case of the **Owners of the Motor Vessel 'Lillian'**, on the other hand, it was held:-

**“Jurisdiction is everything. Without it, a court (tribunal) has no power to make one more step. Where a court (tribunal) has no jurisdiction, there would no basis for continuation of proceeding pending other evidence. A court of law (tribunal) downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”**

9. It is reiterated that that the proceedings before the District Tribunal and the Appeals Tribunal were ultra vires the Tribunal’s powers and the court is urged to set them aside.

10. It is reiterated that the appellant was not given an opportunity to present his case before the Appeals Tribunal. Terming failure to give the appellant a chance to be heard a gross violation of the appellant’s right to a fair hearing, the appellant’s advocate urges the court to allow the appeal in its entirety.

11. In support of the appellant’s case, further reference is made to the case of **Republic v. Chairman, Lurambi Land Dispute Tribunal & 2 others (2006) eKLR** where it was held:-

**“The powers vested in the tribunal under section 3(1) of Act 18 of 1990 do not include power to determine issues of or affecting title to land. The tribunal clearly acted beyond the purview of its jurisdiction and its decision was clearly ultra vires its powers under section 3(1) of the Land Disputes Tribunal Act No.18 of 1990.**

**The *ex parte* Applicant was also not heard or given the right to be heard...I am satisfied that the decision of the Tribunal was a nullity not least because it was *ultra vires* its powers under section 3 (1) of Act 18 of 1990...”**

12. Urging this court to be guided by the authorities cited above, the appellant prays that the decision of the Appeals Tribunal be dismissed with costs to him.

13. On behalf of the respondent, it is pointed out that it is the appellant who took the current proceedings to the District Tribunal and admitted that both the District Tribunal and Appeals Tribunal lacked jurisdiction to hear and determine the dispute preferred before them.

14. Concerning the contention by the Appellant that he was not heard before the decision appealed from was made, it is submitted that the proceedings of the Appeals Tribunal show that the appellant was heard.

15. It is further submitted that it is not clear how the appellant, who was not a member of the Land buying Company, Nyakinyua Investments Limited, obtained title to the suit property.

16. It is also pointed out that the interested party is in occupation of the suit property, having bought it from the respondent way before the case herein was lodged at the Tribunal.

17. Maintaining that the proceedings conducted before the District Tribunal and Appeals Tribunal were a nullity, the respondent urges the Court to declare all of them (the proceedings, rulings and judgment) a nullity and order that the registration in respect of the suit property reverts to Jane Wambui Njoroge as it was the case in 1998.

### **Analysis and determination**

18. It is not in dispute that the subject matter before the District Tribunal and the Appeals Tribunal was registered land. It is also not in dispute that both the Lower and the Appeals Tribunal lacked jurisdiction to hear and determine the dispute preferred before them.

19. From the authority of **Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 others (2012) eKLR**, a court's Jurisdiction flows from either the Constitution or Legislation or both. A court of law (tribunal) can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. By arbitrating over a matter they had no power to arbitrate, the Tribunals acted ultra vires. That being the case, their decision was a nullity in law. In this regard see the case of **Republic v. Chairman, Lurambi Land Dispute Tribunal & 2 others (2006) eKLR (supra)**. Also see the case of **Mateo Githua Ngurukie vs. Hon. Attorney General and 5 Others; Nyeri High Court Civil Suit No. 206 of 1999** where **Ombwayo J.**, stated:-

**“Over and again the Court of Appeal and High Court have held that the Land Dispute Tribunal lacks jurisdiction over registered land especially where the matter at hand touches on title of land. (See Wachira wambugu Case (supra) and Julius Mburu Mbutia case, supra). It follows therefore that the instant issues are not Res judicata due to the fact that they were deliberated upon and determined by an incompetent tribunal that lacked jurisdiction over the same..**

**In the case of Vincent Kipsongok Rotich v. Orphah Jelangat Ngelechei (2014)e KLR supra, the learned judge Munyao J., declined to declare the suit therein res judicata despite the existing decision/order that had been made by the LDT and adopted by the Hon. Magistrates Court.”**

20. On whether the appellant was heard; although in the decision of the Appeals Tribunal reference is made of hearing of both parties, from the record filed in this suit, it is not possible to determine whether the appellant was heard. Be that as it may, having determined that the Tribunals lacked jurisdiction to hear and determine issues concerning title to land, I find that question to be superfluous for purposes of determining this Appeal.

21. Having found the proceedings preferred at the defunct Land Disputes Tribunal in respect of this matter to have been a nullity in law, I declare them as such and direct that the parties revert to the status which obtained before the impugned proceedings were taken.

22. Being of the view that it is the appellant who occasioned the current proceedings by commencing the dispute at the District Tribunal, I condemn him to pay the costs of the appeal.

**Dated, signed and delivered at Nyeri this 16<sup>th</sup> day of June, 2015.**

**L N WAITHAKA**

**JUDGE**

**In the presence of:**

Mr. H. D. Ndirangu for the respondent and I.P.

Mr. Wahome h/b for Mr. Cheruiyot for the appellant

Court assistant - Lydia