



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL APPEAL NO. 78 OF 2007**

**EDWARD KITHELA.....APPELLANT**

**VS**

**JANICE KAUNDU.....RESPONDENT**

**JUDGMENT**

*(Being a second appeal from the decision of the Provincial appeals Committee, Embu which was read in Maua Resident Magistrate's Court on 17/7/2007)*

The appellant in this suit has predicated it upon the following grounds;-

- 1. The Provincial Land Dispute Appeals Committee erred in law in failing to find that the Meru North District Land Disputes Tribunal had no Jurisdiction to entertain and determine disputes over land registered under the Registered Land Act.***
- 2. Without prejudice to the foregoing ground, the Provincial Land Disputes Appeals committee erred in Law in upholding the decision of the Meru North Land Disputes Tribunal that there were interests of the parties deceased father to be passed to the respondent in land parcel No. Njia- Buri-Eruri/2128 which had been registered in the joint names of the parties deceased father M'Itabari M'Marao and the appellant.***
- 3. The Provincial Land Disputes Appeals Committee Erred in Law in failing to accept and appreciate that the respondent was provided for in the undistributed Estate of their deceased father comprising of Land Parcel Nos. Njia-Buri-Eruri/4204, 4205 and 4206.***

For these reasons, the Appellant prays that the Honorable Court;-

- (a) Allows the Appeal.***
- (b) Sets Aside the decisions of both the Provincial Land Disputes Appeals Committee and that of the Meru North Land Disputes Tribunal.***
- (c) Awards Costs for this appeal and the two tribunals proceedings to the appellant.***

The awards that have spawned this appeal are those of Meru North Land District Tribunal in LDT 1 of 2007 and the Provincial Land Disputes Appeals Committee in case No 42 of 2007.

I reproduce the findings of the District Tribunal in its own words (spellings and everything) here below.

## **FINDINGS**

- The plaintiff is a sister to the respondent while the disputed land parcel No Njia/ Buri-Eruri/2128 is jointly registered to respondent and their father (deceased) M'Itabari M'Maroo.
- The respondent is a heart patient and we established his (sic) father catered for her medication with the proceeds of resources from the disputed land prior to his demise.
- We heard that the respondent do (sic) not supplement the plaintiff the way his father used to do.
- The late M'Itabara has other land parcels like parcel No 4204, 4205 and 4206 but it appears the battle is hot on the disputed parcel No. 2128 due to the Miraa belonging to the late M'Itabari.
- In his own evidence the respondent confirms that his father instructed the plaintiff be built a house on one of his land parcels though that never happened.

## **VERDICT**

In the light of the afore-findings, it is clear that the plaintiff has suffered or struggled alone to fight for medication whereas that effort was supplemented by his father (deceased) while alive. The disputed land is the one that harbors the miraa that used to generate income for the deceased. The plaintiff's request that the joint ownership on the disputed land be separated so that she could be entitled to his (sic) late father's interests of (sic) the disputed land. We are convinced that the plaintiff has a genuine claim over the disputed land. We therefore rule that the District Land Registers to subdivide the disputed land into two equal portions and transfer one half to the plaintiff Eunice Kaundu and the same be surveyed on the portion covered by his late father's miraa while the other land to remain registered to Edward Kithela M'Itabari and that the Court Executive Officer/Assistant to sign all the relevant transfer documents to facilitate the transactions”

The award was signed by the chairman and two members and, therefore, was in congruence with the apposite law.

The findings and ruling of the provincial Land Disputes and Appeals Committee are reproduced here below;

## **FINDINGS**

- This appeal court has found that the two parties are related as a brother and a Sister.
- It has been established that the land in dispute land parcel No. Njia/Buri-e- Ruri/2128 was jointly registered under the appellant and their father (deceased) M' Itabari M'Maroo.
- The deceased used to cater for the respondent's medication with the produce gotten from the same shamba prior to his death.
- It has been established that the appellant neglected the respondent (his sister) after the death of their father. He has also occupied the shamba his father left after death.

## **RULING**

- The panel has concurred with the ruling made by the Meru North District Land Disputes Tribunal.
- The Land Registrar is urged to facilitate the subdivision of the above parcel No. Njia/Buri-e-Ruri/2128 to both the appellant and the respondent.
- The appeal is dismissed.”

The award was properly signed by the provincial panel.

The respondent challenged the decision through 2 grounds of opposition as follows;

- 1. That the appellant's appeal is fatally defective and bad in law for raising issues in ground 1 of the memorandum of Appeal which were not raised or considered in the first Appeal.**
- 2. That the Appellants Appeal is fatally defective and bad in law as it raises issues of fact in grounds 2 and 3 of the memorandum of Appeal contrary to the provisions of section 8 (8) of the Land Disputes Tribunals Act.**

I heard the appeal orally on 22/5/2014. The reason that the hearing of the suit could not be disposed of by way of written submissions is because the respondent, who is the appellant's sister, is a lay person who had been acting in person. The appellant has, however, been represented by an advocate.

The appellant submitted generally in support of the grounds of appeal that he had filed. Firstly, he submitted that the Meru North District Land Disputes Tribunal had no jurisdiction as the suit land parcel No Njia/Buri-e-ruri/2126 was registered and only the High Court had jurisdiction to handle matters germane to registered land. He also submitted that as the suit land had previously been registered in the joint names of the appellant and his father as joint proprietors, it followed that upon the death of his father the land devolved to him and his father's interest ceased upon his death.

His sister countered that at the time of their father's death the land had no title deed. I note that the certificate of Official Search availed to court shows that the appellant was registered as proprietor of the suit land on 19/10/2006. Issues such as to whether any trust ceases to exist upon the death of a joint proprietor are issues that can only be canvassed through factual evidence. I find that this ground is not a pure point of law and dismiss it accordingly.

The Appellant also proffered ground 3 to the effect that the father of both parties had 3 undistributed parcels of land and if the tribunal wanted to assist the respondent, they then should have given her land from the land registered in the name of her father. Once again, I find that this submission is not based upon a pure point of law. It calls for factual evidence. I dismiss this ground accordingly.

The respondent generally argued that the award of the District and Provincial Tribunals should be upheld. She also raised issues of fact, which I can not entertain at this appellate stage. She however urged that her 2 grounds of opposition be upheld. As I have already said, grounds 2 and 3 of the memorandum of appeal do not raise pure points of law. I agree with her. I have already dismissed them.

I, however, do not agree with her that ground 1 of the memorandum of appeal is untenable as it raises issues which the appellant had not raised in the earlier proceedings. The issue of jurisdiction, I opine, is a point of law which the appellant has properly raised. I will deal with it now.

Justice Nyarangi JA, as he then was, in the case of “**MV SS Lilian, (1989) KLR1**” opined as follows;

***“ I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. Jurisdiction is everything. Without it a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A court of law does not in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”***

The issue of jurisdiction was not raised before the District and the Provincial Tribunals. That notwithstanding, it is veritably pellucid that a court or a tribunal can not contrive jurisdiction or arrogate into itself the same, unless the said jurisdiction is buttressed by statutory or constitutional underpinnings. The issue as to whether the 2 tribunals had jurisdiction is a pure point of law as envisaged by section 8 (8) of the Land Disputes Tribunals Act.

The jurisdiction of a District Land Disputes Tribunal is donated by section 3 (1) of the Land Disputes Tribunals Act.

It states;

**“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.”**

I find that in this suit the respondent who before her father's death was working and occupying part of parcel no Njia/Burieruri/2128 had filed a dispute before the District Tribunal seeking redress so that she could continue working and occupying the land. The only reasonable way of doing so was to have the land subdivided so that she would get the portion with the miraa she was benefiting from before her father's death. I find that the Land Disputes Tribunal had jurisdiction to entertain the respondent's dispute against the appellant.

A lot has been said regarding the proposition that only the High Court can handle disputes involving registered land. The section which is used to support this proposition is section 159 of the defunct Registered Land Act.

It reads;

**“ Section 159. Civil suits and proceedings relating to the title to, or the possession of, land or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being on interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act”.**

It is clear to me that section 159 exempts matters falling within the ambit of Land Disputes Tribunals, even in areas where land was registered under the Registered Land Act, from the requirement that such matters be handled only by the High Court or a Resident Magistrate's Court where the value does not exceed twenty five thousand pounds.

To me the capping of the pecuniary jurisdiction to twenty five thousand pounds only applied to Resident Magistrate's Court but did not apply to Land Disputes Tribunals. If this were not the case, an interpretation that only the High Court and Resident Magistrates Courts would deal with disputes regarding registered land would spawn awkward and undesirable consequences in that no Land Disputes Tribunals would deal with any land disputes in areas where land was registered under the defunct Registered Land Act.

I opine that the informality of proceedings before Land Disputes Tribunals was beneficial to parties in disputes involving parties such as family members like the parties in this suit who are a brother and sister. That informality allowed matters to be heard by elders and people who know the parties well.

Although, I can not delve into issues of fact as section 8 (8) of the Land Disputes Tribunals Act allows me to deal with points of law only, I note that the respondent called 3 witnesses during the LDT proceedings. The appellant called none. As an appellate court, I admit all findings of fact as established by the Provincial Appeals Committee which upheld the LDT award and dismissed the appellant's appeal.

I find it necessary to point out that section 9 of the Land Disputes Tribunals Act decrees that before an appeal from the Provincial Appeals Committee is admitted, a judge must certify that an issue of law (other than customary law) was involved. I appreciate the fact that the respondent is a lay lady who was representing herself in person. She did not raise this issue although it is clear that before this appeal was admitted, no judge certified that an issue or issues of law were involved. My decision in this matter, will however not be based only on the lack of certification by a judge that the appeal involved an issue or issues of law.

Having found that the tribunals which heard this dispute at the District and at the Provincial Level had jurisdiction and taking into account the matters discussed in this judgment, I dismiss the appeal.

Costs in the District Land Disputes Tribunal, in the Provincial Appeals Committee and in this Appeal are awarded to the respondent.

It is so ordered.

**Delivered in open court at Meru this 31<sup>st</sup> Day of October, 2014 in the presence of;**

Cc Daniel

Ndubi h/b Mburugu for appellant

Janice Kaunda respondent

**P. M. NJOROGE**

**JUDGE**