



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
ENVIRONMENT AND LAND COURT
CIVIL APPEAL NO 154 OF 2005

PETER ARISI OKIOMBEPLAINTIFF

VERSUS

JUSTUS OLANG1ST DEFENDANT

SAMSON CHERUIYOT2ND DEFENDANT

EZRA KIPKIRUI KOECH..... 3RDDEFENDANT

RULING

This appeal relates to a long and protracted land dispute. A case was filed in the Resident Magistrate's Court as Civil suit no. 151 of 1992 but was referred to the Nakuru Municipality Land Disputes Tribunal by the Senior Resident Magistrate, Nakuru after consent of both counsels for hearing and determination. The case was in respect of land parcels no 1796 and 1797 ("suit land") measuring 3.6 acres. After hearing the dispute, the said land disputes tribunal noted that the dispute was between four parties, each claiming a piece of land formally belonging to the late Kipkoech Kaliasoi.

After Kipkoech died his second wife Emily Chepkoech Kaliasoi unbeknown to the first wife, managed to obtain letters of Administration to the estate of the deceased vide gazette notice No. 681 of 23rd February, 1990 and sell portions of land to both the plaintiff and the 1st defendant.

The tribunal observed that the third defendant had confirmed to the tribunal that he was allocated plots number 1824 and 1825 each measuring 0.6 acres by the directors of Kalenjin Enterprises Company Limited and had even been issued with title deeds for the two plots.

The tribunal noted that the second defendant was allocated plot No. 1823 by the directors of Kalenjin Enterprises Company Limited measuring 0.6 acres.

The tribunal ordered that Peter Arisi and Justus Olang to remain in their plots 222 and 225 respectively as is the case on the ground. The two to be issued with title deeds with Peter Arisi having 2.6 acres and Justus Olang having 2.7 acres.

Ezra Koech, the 3rd defendant to remain in plot Nos. 1824 and 1825, each plot measuring 0.6 acres.

Samson Cheruiyot, the 2nd defendant to move to his plot 1823 measuring 0.6 acres and to be issued with a title deed for the same.

Finally all parties were directed to immediately move into their plots and start developing them without further delay.

This award was adopted as an order of the court and a decree issued on 22nd July, 2005.

The respondent was dissatisfied with the decision of the Nakuru Land Dispute Tribunal and duly filed an appeal before this court.

In the memorandum of appeal, the appeal raised six grounds of appeal challenging the award of the Nakuru Disputes Tribunal. The summary of the grounds of appeal are;

That the appellant was aggrieved that the tribunal erred in law and fact by not considering the appellant and his witnesses evidence and arrived at a biased decision which was ambiguous: That the decision of the tribunal was completely against the weight of the evidence adduced: That the learned Magistrate erred in law and fact by not giving the parties any chance to raise objections if any and also by referring Nakuru CMCCNO. 151 Of 1992 to the Land Dispute Tribunal without setting out time limit for Arbitration: That the consent that the parties made enabling the tribunal to arbitrate was ambiguous, impracticable and wrong in fact and law and ought not to have been acted upon in the form it was.

Before the appeal was heard, a notice of preliminary objection was filed by counsel for the 3rd respondent on 3rd November, 2011 on the grounds that this honourable court does not have jurisdiction to entertain the appeal herein in view of the provisions of section 8 of the Land Dispute Tribunal Act NO. 18 of 1990.

This is what was urged before me on 3rd June, 2013. Mr Ngure for the 3rd interested party stated that the Land Dispute Tribunal Act NO. 18 of 1990 provided for the mechanism for appeals. In the instant case the appellant had skipped the Appeals Committee and gone straight to the High Court which did not have jurisdiction as it was usurping the powers of the Appeals Tribunal.

Mr Kamau for the appellant agreed that whereas section 8 of the Land Dispute Tribunal Act NO. 18 of 1990 provided for the aforementioned mechanism, section 9 of the same Act allows the court to be approached on matters of law: That in the instant case all issues stated in the memorandum of appeal are on points of law. In support of his case he cited the case **Wafula Ouma Kutoro V Jeremiah Odule Eklr 2005.**

In response, Mr Ngure argued that the High Court could deal with points of law only on cases emanating from the Appeals Committee but not from the District Committee and further that although the Land Dispute Tribunal Act NO. 18 of 1990 was repealed, it was the Act in use at the time this appeal was filed and the High Court did not have Jurisdiction then.

The Environment and Land Court was established by Article 162 (2) (b) of the Constitution of Kenya 2010 and came under operation through the Environment and Land Court Act and other statutes.

Section 13 (1) of the Environment and Land Court Act provides the jurisdiction of the Court to include:

“The Environment and Land Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of the Act or any other written law relating to environment and land.”

Whereas the Land Act, 2012, the Registration of Titles Act, 2012 and the Environment and Land Court Act, repealed a number of statutes that dealt with environment and land, it is worthwhile to note that in the instant case the Act had not been repealed at the time this appeal was filed in 2005 therefore the tribunal established therein was to exercise its mandate in accordance with the 'forming Act'.

The jurisdiction of the Tribunal established under Section 3(i) of the land Disputes tribunal (repealed) had

power to determine:

“..... all cases of a civil nature involving a dispute to:

- a. **The division of or the determination of boundaries of land, including and 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”**

4.(1) There shall be established a tribunal, to be called the Land Disputes Tribunal, for every registration district.

The aforesaid Act provided a mechanism for any party not satisfied with the decision at a District level.

Section 8(1) states "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....."

(8) The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie there from to any court.

(9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of: Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved.
(emphasis mine)

Section 8(9) aforementioned leaves no doubt that the Tribunal is the one clothed with appellate jurisdiction to hear and determine these disputes in as far as it relates disputes from the district land tribunal.

I now turn to the issue raised in the instant application namely, whether this court has jurisdiction to determine the dispute herein.

In the case of **Peter Kipkorir Rotich v Nicodemus Kuresoi Ntiwas Wendoh J. Misc. Appl. NO. 32 of 2012** referred to **Desai v Warsama (1976) E.A 351**, where it was held that a court cannot confer jurisdiction on itself. **In owners of the motor vessel "Lillian S" v Caltex Oil (Kenya) Limited. (1989) KLR 1**, JJ Nyarangi, Masime and Kwach of the court of appeal had this to say of jurisdiction:

“...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 a continuation of proceedings pending other evidence. A court of law down tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:

‘By jurisdiction is meant the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognizance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine

conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given.

Having already determined that the Appellate Committee established under Cap 18 of 1990 had jurisdiction to hear and determine disputes on which parliament had clothed it with jurisdiction this court can therefore not have concurrent jurisdiction to hear and determine the dispute herein.

I uphold the 3rd respondent's preliminary objection dated 3rd November, 2011 and dismiss the appeal with costs.

Dated, signed and delivered in open Court at Nakuru this 14th day of August 2013.

L N WAITHAKA

JUDGE

Present

Ms Ayuma holding brief for Mr Kamau for the Appellant

Mr Ngure for 3rd Respondent

N/A for 1st & 2nd Respondent

Stephen Mwangi : Court Clerk