



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CIVIL APPEAL NO. 10 OF 2007

SAMUEL NGANGA THUO.....APPELLANT

VERSUS

YUSUF JUMARESPONDENT

JUDGEMENT

1. This appeal is brought by the appellant following a long protracted dispute between him and the respondent challenging the decision of the Rift Valley Province Land Disputes Committee made in favour of the respondent in Land Disputes Appeal Number 2 of 2004.
2. The dispute between the parties herein relates to ownership of Nakuru Municipality 29/ 767 (735 old) which is currently registered in the appellant's name.
3. The appellant claims to have bought the suit land from Joseph Kiprotich Arap Chepkagat in 1977 and was given all the original documents relating to the suit parcel including the share certificate, Ballot card, green card, building permit, sale agreement and transfer of share form. He developed a timber store with three rooms but the respondent also moved into the suit land and built a two roomed house. They went before the District officer to settle their dispute and a resolution was reached that the Company would allocate the respondent another parcel of land. In Compensation, the appellant would put up a two roomed house for the respondent. This decision was later overturned by the District Commissioner. The Appellant being dissatisfied filed a claim before the Nakuru District Tribunal seeking that the tribunal finds that Nakuru Municipality 29/767 (735 old) belonged to him and that the respondent be evicted from the said plot. The tribunal found in his favour that **“the suit land belonged to the appellant and the respondent should continue pursuing the company for his plot.”**
4. The respondent also alleges that he bought two shares from Kipkoech Sigei in 1979 after ascertaining from the offices of Kalenjin Enterprises that the vendor had shares in the Company. He went ahead and constructed a two roomed house on the suit land and was issued with a share certificate in 1990. The authenticity of his documents was later confirmed and registered by a taskforce which had been set up to survey, subdivide the plots and detect genuine members of the Company and the register presented to the District Commissioner, Nakuru. However, in 2001 he received a demand letter from the appellant's advocate to move out of the suit land failure of which he would be evicted and later received summons to appear before the District Land Disputes Tribunal. The subordinate tribunal found in favour of the appellant and being dissatisfied with their decision he appealed to the Rift valley Province Land Disputes Committee.
5. The Rift Valley Province Land Disputes Committee after listening to the two parties and their witnesses reversed the decision of the subordinate Tribunal in these terms:

(i) “That the suit land belonged to the respondent

(ii) That due to oversight by the directors of Kalenjin Enterprises on registering the respondent, Samuel Thuo on LR NO. Nakuru/ Municipality/Block 29/767 initially registered the appellant and deleted on the register, have contributed plot No. Nakuru/ Municipality/Block 29/ 1187 as compensation to the respondent Samuel Thuo .

(iii) The respondent to surrender the title to the suit land to the Nakuru District Registrar for fresh issuance to the respondent. The appellant to be issued with a title to Nakuru/ Municipality/Block 29/ 1187 by Kalenjin Enterprises.”

6. The appellant was dissatisfied with this decision and preferred this appeal on five grounds:

That the Provincial Land Disputes Appeal Tribunal Board:

- i. Erred in law in that sitting in its appellate capacity received fresh evidence contrary to the Law thereby acting in an original capacity thereby operating outside its mandate to the prejudice of the appellant.**
- ii. Invoked upon itself a jurisdiction that was not provided for by the relevant statutes thereby rendering the entire proceeding null and void in law.**
- iii. Failed to make findings on the District Tribunal’s ruling thereby giving no sufficient reasons why it overturned the lower tribunals’ decision which was in favour of the appellant.**
- iv. Exceeded its mandate in ordering the cancellation of the appellant's title, a power which is only reserved for the High court under the relevant statute to the prejudice of the appellant's right and interest.**

(v) Lacked statutory jurisdiction and therefore their proceedings and verdict cannot stand the test of the law.

The appellant prays that the appeal should be allowed, the decision of the tribunal set aside, the decision of the District tribunal upheld and costs of the appeal be provided for.

7. On 19th November, 2012 the appellant filed an application by way of notice of motion that the Court certifies that an issue of Law is involved in this appeal in accordance with section 8(9) of the Land Disputes Tribunal Act. This application was allowed by consent on 5th February, 2013 and Parties took directions that the appeal would be heard by this court in one day and the same would be disposed of by way of written submissions.

9. When the appeal was ultimately set down for hearing, the appellant filed written submissions.

The respondent did not file submissions within the time given despite the opportunity to do so and only sneaked in their submissions on 30th October, 2013.

On 3rd October 2013, I directed that judgment shall be rendered on consideration of submissions and material on record as at 10th October, 2013. I shall proceed to render myself thus.

10. In his submissions, counsel for the appellant stated that the Appeals Tribunal admitted fresh evidence by hearing oral evidence from the parties and their witnesses contrary to section 8(1) of the Land Disputes Tribunal Act Cap 18, invoked on itself jurisdiction to cancel title to land contrary to its mandate as outlined in section 3(1) of the aforementioned Act. He relied on the following three authorities which I have read and considered:

(i) Republic Vs The Chairman Land Dispute Tribunal Appeals Committee Rift Valley

Province and others exparte Kibor Arap Busieney (2010)eKLR

(ii) Republic Vs Nyandarua Land Disputes Tribunal & others Ex-parte Gicere Gakahe High Court Misc. Appl. No 200 of 2008

(iii) Republic Vs Kiobatek Land Dispute Tribunal & others Exparte John Kuka Ole Kipwalei J.R 13 of 2008 .

All the three authorities support his argument that the tribunal had no mandate to deal with ownership of land and/or cancellation of title. **Under section 159 of the Registered Lands Act Cap 300** (now repealed) only the High Court and Subordinate courts can try matters relating to titles. Finally he submitted that the Appeals Tribunal failed to make findings in respect of the District Tribunal's decision which was being appealed against: that it failed to consider the decision's merits, demerits and legitimacy but instead reached its findings based on the fresh evidence it heard.

11. This appeal basically raises three issues for determination:

1. Did the tribunal have jurisdiction to entertain the claim before it? If I find in the affirmative then I will proceed to consider,
2. whether the tribunal considered fresh evidence
and
3. whether the appeals Committee failed to make findings on the District tribunal's ruling.

Did the tribunal have jurisdiction to entertain the claim before it?

12. **Section 3 (1) of the Land Disputes Tribunal Act N0. 18 of 1990, (Cap 303A Laws of Kenya)** before its repeal by the **Environment and Land Act, 2011(NO. 19 of 2011)** sets out the jurisdiction of tribunals in Civil cases as:

“ (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,”

13. **Section 8 (1)** of the same Act allows anyone dissatisfied with the decision of the District Land tribunals to appeal to the Appeals Committee.

“8.(1) 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.”

14. If a party is further dissatisfied they may then appeal to the High court on points of laws under sections 8(9) of the Act.

(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."

15. The issue before the Nakuru Lands Dispute Tribunal, and indeed the Provincial Land Disputes Appeals Tribunal Committee was not about any of the issues named in section 3(1) of the Act but rather about the ownership of Nakuru Municipality 29/767 (735 old).

16. In **Wamwea vs Catholic Diocese of Muranga Registered Trustees**, (2003) KLR Khamoni J. held inter alia- **"Tribunals and land Disputes Appeals Committees do not have jurisdiction to hear disputes over title to land."**

17. The Nakuru Lands Disputes Tribunal had no jurisdiction to declare that the suit land belonged to the Appellant. That is a matter for this court, or the subordinate court under **section 159 of the Registered Land Act Cap 300, Laws of Kenya** (now repealed) which states:

" 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 an 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."

18. The decision of the subordinate tribunal was a nullity, and a court of Law cannot sanction an illegality. Similarly the Provincial Land Disputes Appeals Tribunal Committee could not sanitize an illegality. Its decision is equally an illegality.

19. For those reasons this court calls up, not only the decision of the Provincial Land Disputes Tribunal Appeals Committee issued on 30th November 2006, but also the decision of the Nakuru Land Disputes Tribunal and the said awards, and declares them a nullity.

20. Having found that the Appeals Tribunal lacked jurisdiction to entertain the claim before it, I do not find it necessary to consider the other two issues for determination.

21. Each party to bear their costs for this appeal.

Dated and delivered at Nakuru this day of 15th November, 2013.

L N WAITHAKA

JUDGE

PRESENT

Mr Njuguna for the Appellant

Mr Ombui for the Respondent

Emmanuel Maelo: Court Assistant

L N WAITHAKA

JUDGE