



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muya v Ngari (Environment & Land Case 5 of 2018)  
[2022] KEELC 4914 (KLR) (12 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 4914 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 5 OF 2018**

**L WAITHAKA, J**

**MAY 12, 2022**

**BETWEEN**

**EDWARD WANGURA MUYA ..... APPELLANT**

**AND**

**PURITY WANGUI NGARI ..... RESPONDENT**

**JUDGMENT**

**Introduction**

1. The genesis of this appeal is an award of Mathira Land Dispute Tribunal made on 2<sup>nd</sup> December, 2011 in Mathira Land Dispute Tribunal Case No.2 of 2010.
2. The respondent had filed a case at the Tribunal claiming that the appellant held a portion of the parcel of land known as Konyu/Ichunga/334 (the suit property) in trust for her.
3. Upon hearing the case urged by the parties the Tribunal held:

“The suit land Konyu/Ichuga/334 be subdivided as follows:  
Purity Wangui Ngari the claimant to receive 1.2 acres while Edward Wangura Muya the objector to receive the remaining portion.”
4. Aggrieved by the decision of the Tribunal, the appellant appealed to the Provincial Appeals Tribunal on the grounds that the Tribunal erred by:-
  - (a) Failing to find that the appellant does not hold the suit property in trust for the respondent;
  - (b) Failing to find that the appellant did not inherit the entire property from his father;



- (c) Failing to find that the respondent was bound by the agreement entered into between the parties on 16<sup>th</sup> July, 2005 where the appellant gave the respondent ¼ of an acre to tend her husband's grave;
  - (d) Failing to find that the appellant bought three (3) acres of land in Aguthi Ranching company for the respondent's husband.
  - (e) Failing to take into consideration the evidence of the appellant and his witness; and
  - (f) By giving an award in favour of the respondent.
5. The appeal was transferred to this court following disbandment of the Tribunals when the [Land Disputes Tribunals Act](#) (LDTA) was repealed by the [Environment and Land Court Act](#), 2011.
  6. The appeal was disposed of by way of written submissions.

### **Submissions**

#### **The Appellant's submissions.**

7. On behalf of the appellant, a brief background of the appeal is given and submitted that there was no reasonable basis for the award.
8. Based on Section 3 of the [LDTA](#) now repealed, it is submitted that the dispute presented before the Tribunal did not fall within the jurisdictional ambit of the Tribunal.

#### **The Respondent's submissions.**

9. In the submissions filed on behalf of the respondent it is submitted or contended:-
  - (i) That the registration of the appellant as the proprietor of the suit property is subject to a trust in favour of the respondent's deceased husband;
  - (ii) That there is no appeal before this court. The Memorandum of Appeal before this court is said to be neither signed nor dated.
  - (iii) That the appellant participated in the proceedings presented before the Tribunal and did not raise the issue of jurisdiction.
  - (iv) That the appellant should have appealed against the judgment entered and not the award; and
  - (v) That the appellant had agreed to give the respondent a portion of the suit property.
10. It is further submitted that an Appeal to the High Court is on a point of law where the judge certifies the same. In the circumstances of this case, it is contended that this court did not certify that the appeal raises a point of law. For that reason, the appeal is said to be premature.
11. Maintaining that the suit property is family land, the respondent urges this court to consider her interest and that of her family in the suit property which interest is an overriding interest to the interest held by the appellant.

#### **Analysis and determination**

12. From the Record of Appeal, the decision of the Tribunal appealed from and the submissions, it is discernable that the claim preferred to the Tribunal related to registered land. The claim also touched on whether the registration of the appellant was subject of a trust in favour of the respondent.



13. On account of the fact that the claim referred to the Tribunal was in respect of registered land and the question as to whether the appellant's registration was subject of a trust in favour of the respondent; I find the sole issue for determination to be whether the Tribunal had jurisdiction to hear and determine disputes touching on registered land.
14. However, before I address that issue, I must address an issue raised in the submissions of the respondent to wit whether the appeal herein is proper.
15. With regard to that issue, the respondent contends that there is no appeal before this court because the memorandum of appeal filed in this appeal is neither dated nor signed. The appeal is also said to be premature because the court did not certify it to be raising an issue of law as by law required.
16. Concerning the issue, I wish to draw the respondent to the proceedings of 25th June, 2018 where the appellant sought directions on how to dispose of the Appeal. The court noted that the Memorandum of Appeal was not dated and signed and directed that the same be regularized.
17. In line with the direction given by the court, the Appeal was regularized before directions in respect thereof.
18. The action of issuing directions in respect of the Appeal meant that the court was satisfied that the appeal raised an issue of law.
19. I also note that the respondent filed and served a response to the Appeal and participated in the Appeal. She is therefore unlikely to suffer any prejudice on account of any procedural defects in admission of the appeal to hearing.
20. In addressing the issue as to whether the Tribunal had jurisdiction to hear and determine the dispute preferred before it on account of the fact that it touched on registered land, I will not re-invent the wheel but adopt the decision in the case of *Jessee Kamau Kinuthia v Teresia Wanjiku Kamande* [2008]eKLR where it was stated:-

“The case for the respondent before the tribunals was anchored on family trust. Does, the Land Disputes Tribunals have jurisdiction to entertain such claims? I do not think so.

Section 3 (1) of the Land Disputes Tribunal Act sets out the mandate of the tribunals set up pursuant to the relevant provisions of the Act. It provides that:

“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”

Nowhere in the above mandate is a tribunal authorized to hear claims based on family trust or title to land. The tribunal therefore acted without jurisdiction by purporting to dish out 2.3 acres of the suit premises to the respondent blatantly ignoring the fact that the appellant is the registered owner of the suit premises. Pursuant to sections 27 and 28 of the Registered *Land Act*, once a person is registered as the proprietor of a parcel of land, that registration vests in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto. Those rights are not liable to be defeated



except as provided for in the same Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever. However a trust is one of the interests recognized by the Act that may very well defeat the interest conferred by such registration and or the rights of the proprietor as aforesaid. However it is not within the realm of the Land Disputes Tribunals to ventilate causes of action based on family trusts. Those causes of action are best left to be ventilated elsewhere and in particular our civil courts. The Land Disputes Tribunals are certainly not among those civil courts.

In ordering the subdivision of the suit premises, the tribunal dealt with matters relating to title to land which jurisdiction it does not have. Such jurisdiction under section 159 of the Registered Land Act and as pointed out by Justice Aganyanya in *Mbugua Thiga V Teresia Wangechi Macharia & 2 others* HCCA No.460 of 2000 (UR) is again vested in our civil courts. The learned judge opined:

“.....Neither the District Land Disputes Tribunal at Maragwa nor the Provincial Land Disputes Appeals Committee had any power to adjudicate over the issue of title to land, since this jurisdiction is still vested in either the High Court and or the Resident Magistrate’s Court depending on the pecuniary value of the subject matter – see section 159 of the Registered Land Act..... To carry out the orders of the Maragua Divisional Land Disputes Tribunal and or the Provincial land disputes appeals committee would result in the rectification of the Register which goes against the spirit of section 143 of the Registered Land Act when conditions laid down in that section for such an order to be made were not shown to exist in the case.....”

I appreciate that this is a decision of persuasive value only having been made by a judge of concurrent jurisdiction. However I agree entirely with his reasoning. The same situation obtains here. A dispute as to title to land can only be ventilated either in the High Court or the Resident Magistrate’s Court depending on the pecuniary value of the land. This provision of the law clearly and expressly therefore ousts completely the jurisdiction of the Land Disputes Tribunals in hearing and entertaining claims pertaining to title to land.

Jurisdiction is jurisdiction and is everything. Jurisdiction is expressly conferred and cannot be inferred. It matters not that in the circumstances of this case, the appellant submitted himself to the jurisdiction of the Land Disputes Tribunal. Jurisdiction cannot be conferred by the consent of parties where there is none. Jurisdiction cannot be conferred merely because a party acquiesces to some proceedings. Estoppel as a principle of law cannot be invoked to confer jurisdiction. It cannot be invoked to confer jurisdiction where there is none or where it has been expressly ousted. Indeed jurisdiction is a matter of law and can be raised at any stage of the proceedings. The mere fact that the applicant did not raise the issue during the proceedings before the tribunals does not bar him from raising it as he has done in the instant proceedings...”

21. Because the subject matter of the dispute preferred before the Tribunal was Registered Land; on the basis of the numerous authorities both by the High Court and the Court of Appeal to the effect that the Land Disputes Tribunals established under the LDTA had no jurisdiction to hear and determine disputes touching on registered land, I have no difficulty in finding that the Tribunal had no jurisdiction to hear and determine the dispute presented before it.



22. The effect of proceeding without jurisdiction was to render the decision of the Tribunal null and void. In this regard see the case of *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989]eKLR where it was held:-

“where a court takes it upon itself to exercise jurisdiction it does not have its decision amounts to nothing.”

23. The upshot of the foregoing is that the Tribunal erred in law by hearing and determining a matter it did not have jurisdiction to hear and determine.

24. This determination renders the other issues raised in the respondents response to the appeal and submissions otiose.

25. The upshot of the foregoing is that the appeal herein is found to have merit and allowed as prayed.

**DATED AND SIGNED AT ITEN THIS 26TH DAY OF APRIL, 2022.**

**L. N. WAITHAKA**

**JUDGE**

**READ, SIGNED AND DELIVERED AT NYERI THIS 12TH DAY OF MAY, 2022.**

**J. O OLOLA**

**JUDGE**

