



**Njebere v Muriuki & 2 others; Kabui (Applicant) (Environment and Land Appeal 2 of 2017) [2022] KEELC 3749 (KLR) (9 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3749 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL 2 OF 2017**

**JO OLOLA, J**

**JUNE 9, 2022**

**BETWEEN**

**KABUI NJEBERE ..... APPELLANT**

**AND**

**PETER MAINA MURIUKI ..... 1<sup>ST</sup> RESPONDENT**

**MURIUKI KARIUNGI NJEBERE ..... 2<sup>ND</sup> RESPONDENT**

**MARGARET WAMBUI KUNG'U ..... 3<sup>RD</sup> RESPONDENT**

**AND**

**STEPHEN KARIUKI KABUI ..... APPLICANT**

*(Formerly NYERI HCCA 95 OF 2001)*

**JUDGMENT**

1. By a memorandum of appeal dated and filed herein on July 31, 2001, one Kabui Njebere (now deceased) urged the court to set aside the decision of the Nyeri Provincial Land Disputes Tribunal made on July 12, 2001 in Nyeri Provincial Appeal Tribunal Case No 148 of 2001.
2. It was the appellant's case that neither the District Land Disputes Tribunal nor the Provincial Land Disputes Tribunal had the jurisdiction to entertain this matter touching as it is on the issue of title to land. The appellant therefore urged the court to set aside the decision of the tribunal and to order that the matter be heard afresh before this court.
3. By directions given herein on May 19, 2016, it was agreed that the appeal would be disposed of by way of written submissions. I have accordingly carefully perused and considered the record of appeal as well as the rival submissions filed herein by the learned Advocates acting for the parties.



4. From the material placed before me, it was not in dispute that the original appellant herein the said Kabui Njebere (now deceased) was previously the sole registered proprietor of all that parcel of land known as LR No Magutu/Gaikuyu/561 measuring approximately 5.06 acres. Sometimes in the year 1999 the respondents herein filed Mathira Land Dispute Tribunal Case No 26 of 1999 claiming part of the said parcel of land.
5. After hearing the parties the tribunal rendered a decision which was adopted as an order of the Residents Magistrates Court at Karatina in Land Case No 5 of 2000. Aggrieved by the determination the deceased Kabui Njebere instituted an appeal before the Nyeri Provincial Land Disputes Tribunal in the said Provincial Appeal Tribunal Case No 148 of 2001.
6. By its decision rendered on July 12, 2001, the provincial panel upheld the award by the Karatina District Land Tribunal to the effect that Kabui Njebere should transfer 1.0 acres of the suit property to Peter Maina Kariuki and 1.5 acres to Margaret Wambui Kungu and Muriuki Kariungi Njebere to hold jointly. That is the scenario that informed this appeal which was originally filed in the High Court before it was transferred to this court on February 15, 2016.
7. As it turned out the original appellant Kabui Njebere passed away on June 30, 2006 and the appeal was declared to have abated on March 4, 2008. The suit was however revived on October 17, 2016 following an application by one Stephen Kariuki Kabui as the legal representative of the estate of the late Kabui Njebere.
8. In their submissions herein the respondents fault the proceedings herein and the submissions filed on behalf of the appellants on the grounds that neither the appellant's counsel nor the person who applied to revive the appeal have any *locus* to file the submissions as they have not been made a party to the suit. The respondents contend that although the appeal was revived, there was no formal order to substitute the appellant with anybody.
9. That did not appear to me to be the correct position herein. From a perusal of the record, it was apparent that *vide* a notice of motion application dated and filed herein on June 4, 2018, the said Stephen Kariuki Kabui had sought orders at prayers b and c of the application as follows:
  - (b) The court be pleased to substitute the appellant with the applicant being the deceased's legal representative; and
  - (c) The court be pleased to revive the appeal herein.
10. Having heard the said application and in her ruling delivered herein on February 28, 2019, the honourable Lady Justice L N Waithaka allowed the application in terms of the said prayers b and c of the application. That being the case I was unprepared to accept the submissions that there was no formal order to substitute the appellant.
11. As it were section 3(1) of the *Land Disputes Tribunals Act* (now repealed) limited the jurisdiction of the tribunals to deal with 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/and; or
  - (c) Trespass to land.



12. In their submissions herein, the respondents contend that the tribunal had jurisdiction to deal with the matter as theirs was a claim based on occupying and working on land. Their claim was captured at page 1 of the Mathira Tribunal Case No 26 of 1999 as follows:

“Margaret Wambui Kungu – Claimant.

I am making a claim of my grandmother’s piece of land from the objector. Muriuki Kariungi is also making a claim of my grandmother’s piece of land from the objector (Kabui Njebere). The objector is my uncle. The parcel of land which we are making a claim is Magutu/Gaikuyu/136. This parcel was later sub-divided into two portions i.e. Magutu/Gaikuyu/561 and 562. My grandmother died in 1973 and she did not have a son. My mother and Muriuki Kariungi’s mother were sisters. So Muriuki Kariungi is my cousin. My mother got married but Muriuki Kariungi’s mother did not get married.

During land demarcation the suit land (i.e before sub-division) was registered in the name of Kabui Njebere (objector) as a trustee. Before I got married I used to cultivate the suit land. When Kariuki Muriungi made a claim against the suit land the objector refused to give him. After this we went for arbitration before the sub-chief. It was agreed that Muriuki Kariungi should get 1 ½ acres. We were not satisfied and we went before the Chief.

The objector (Kabui Njebere) refused to appear before the Chief but instead went to his advocate.

That is when we were referred to the tribunal. I would ask the tribunal to order the objector to transfer to me (Margaret Wambui Kungu) and Muriuki Kariungi 2.6 acres. The remaining portion to be shared equally between the objector and Peter Maina Muriuki.”

13. That being the case it was clear to me that this was not a claim to work or occupy land. Contrary to that assertion, the respondent’s claim for a share of the registered land was based on trust. The decision of the tribunal thus dealt with the title of registered land which they sought to have cancelled and apportioned between the appellant and the respondents.
14. That was clearly a matter beyond the jurisdiction of the tribunals. The tribunals could not purport to award parcels of land registered under the [Registered Land Act](#) to the respondents as they sought to do in the two cases. As was stated by the Court of Appeal in [Joseph Karobia Gicheru vs Michael Gachoki Gicheru](#) (2013) eKLR:

“Where a court or tribunal embarks on the hearing and proceeds to determine a dispute over which it has no jurisdiction, the entire proceedings are empty of legal life and are null and *void ab initio*. No amount of acquiescence by any party to the conduct of such proceedings and no measure of consent by the parties, no matter how express or deliberate could confer upon such court or tribunal such Jurisdiction. The proceedings and orders are nullities and of no effect from inception and remain so to the end.”

15. Accordingly I am persuaded that this appeal has merit. I allow the same and hereby set aside the determination of the Nyeri Provincial Appeals Land Disputes Tribunal case No 148 of 2001 dated July 12, 2001 as well as any consequential orders.
16. Each Party shall bear their own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 9<sup>TH</sup> DAY OF JUNE, 2022.**



**In the presence of:**

Mrs. Maina holding brief for Kebuka Wachira for the Respondent

Mr. Nderi for the Applicant

**Court assistant - Kendi**

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**J. O. Olola**

**JUDGE**

