



**Kasena v Katsole (Miscellaneous Application 27 of 2016)
[2022] KEELC 3954 (KLR) (14 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 3954 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
MISCELLANEOUS APPLICATION 27 OF 2016**

M SILA, J

JULY 14, 2022

BETWEEN

MENZA KASENA APPLICANT

AND

NGALA KATSOLE RESPONDENT

JUDGMENT

1. This is an appeal arising from the decision of the Kaloleni Land Disputes Tribunal which decision was adopted as the judgment of the court in Kaloleni Resident Magistrate's Court Land Award No. 28 of 2000. The appeal had been lodged before the Provincial Land Disputes Appeals Committee and was pending when the Land Disputes Tribunal Act was repealed by the Environment and Land Court Act, 2011. That is how this appeal ended up before this court.
2. The appellant was the claimant before the Land Disputes Tribunal (the Tribunal). The land in dispute is registered as Kaloleni/Chalani/202. The title is registered in the name of Katsole Mumba, the same having been issued on 5 July 1990. The dispute was lodged before the Tribunal sometimes in the year 2000 and hearing commenced on 7 August 2000. It is instructive to state that Katsole Mumba died in the year 1986 or thereabout and the person sued was the respondent, Ngala Katsole, who is a son of Katsole Mumba. There is no evidence that he is holding any grant of letters of administration in respect of the estate of Katsole Mumba, an issue that I will address a little later in this judgment.
3. At the Tribunal, the appellant's case was that their grandfathers, Menza Nzola (Menza) and Mumba Nzola (Mumba) came from a place identified as Godona. Menza died and left four children, one male and three female. His wife then got married to Mumba. Mumba proceeded to Kaloleni where he bought the disputed land. It was claimed that he purchased it using the dowry of one of the daughters of Menza. It was alleged that at the time the land was bought, the respondent was away in Nairobi. When he came from Nairobi, he and his father (Katsole Mumba, hereinafter simply referred to as Katsole) went to a place called Mihingoni and bought land there, allegedly because they acknowledged



that the disputed land was purchased with dowry from Menza's daughter. It was further alleged that the appellant's father proceeded to live in another land in Shimo La Tewa and he died there. After his death, the appellant and their family moved back to Mihingoni and were told to settle there by Katsole. They did not, and instead insisted on going back to what they believed was their ancestral land, which is the disputed land. They went there and build structures. After the death of Katsole, the respondent came wishing to sell the land. It is that which prompted them to file suit before the Tribunal asserting ownership to the land.

4. The respondent's case was that the land was bought by their grandfather (Mumba). After he died, it was left to their father (Katsole). Upon the death of their father, they proceeded to follow up on what their father owned and collected his title deeds. Among them was title to the disputed land. He asserted that the appellant was a squatter on the suit land, and that if he had any issue, he ought to have complained before his father died. He insisted that the appellant has no right to the land.
5. After hearing the dispute, the Tribunal determined that the suit land should remain with Katsole, and the children of Katsole to inherit from their father, and the appellant should not interfere at all. Aggrieved, the appellant filed the appeal before the Provincial Land Disputes Appeals Committee, and I have already explained that this court is now seized with the appeal as the Provincial Land Disputes Appeals Committee is defunct.
6. The appeal was argued by way of written submissions and I have taken note of the submissions of counsel for the appellant and the submissions of the respondent who is acting in person. Unfortunately, none of the parties addressed me on two critical issues that I have fleshed out of the proceedings. The first is the fact that the person whose title was in dispute was already deceased at the time the suit was presented before the Tribunal. The second is whether the Tribunal had jurisdiction to hear the type of dispute that was presented.
7. On the first point, Katsole, the registered owner of the land, was already deceased when the dispute was lodged before the Tribunal. The respondent, who was the person sued, is a son to the deceased. There was no demonstration that he could represent the estate of the deceased and no evidence of him holding any grant of letters of administration to the estate of the deceased. There are some documents presented showing that the appellant has filed a citation in Mombasa Chief Magistrate's Court, Succession Cause No. 341 of 2019, to have the respondent accept or refuse to be issued with grant of letters of administration of the estate of the deceased. This is a matter filed in the year 2019. That is testament enough that the appellant was aware that the respondent did not hold any grant of letters of administration when he presented his claim before the Tribunal in the year 2000. The respondent had no capacity to be sued in respect of the estate of the late Katsole. The entire proceedings before the Tribunal were therefore a non-starter and null and void ab initio.
8. Apart from the above, the dispute before the Tribunal was clearly one over ownership of land and who should have title to it. The Tribunal did not have jurisdiction to entertain such a dispute. The jurisdiction of the Tribunal was spelt out in Section 3 of the Land Disputes Tribunal Act (repealed) which was drawn as follows :-

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.



9. The nature of the dispute before the Tribunal was not one of division or determination of boundaries. Neither was it a claim to occupy or work land. It was also not a dispute on trespass to land. It was squarely an ownership dispute for which the Tribunal did not have jurisdiction. It is trite that a proceeding and decision of a body without jurisdiction is null and void.
10. It therefore my finding that the appellant presented a case before the wrong forum. I have no option but to declare null and void the award of the Tribunal and the judgment of the Kaloleni Magistrate's Court in Kaloleni Land Award No. 28 of 2000. The same are hereby set aside.
11. I think I need to make clear that what I have done is to declare that the Tribunal had no jurisdiction. By setting aside the award and subsequent judgment, I am in no way declaring the appellant as a victor in the dispute. I am merely upsetting the judgment for reason that it was rendered by a Tribunal with no jurisdiction. The legal position therefore is that title is still held in the name of the deceased. The dispute herein remains unresolved and any party is at liberty to present the dispute before the proper legal forum for determination if they wish to proceed with it.
12. The only issue left is costs. The parties herein are cousins. Both of them contributed to the proceedings being conducted at the wrong forum. Indeed, as I have pointed out, even within this appeal, the respondent did not raise the issue of jurisdiction. For these reasons, each party to bear his own costs.
13. Judgment accordingly.

DATED AND DELIVERED THIS 14 DAY OF JULY 2022.

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COUR

AT Mombasa

