



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAKURU

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(Being an appeal from the decision of the Rift Valley Provincial Appeals Committee Nakuru No. 21 of 2000 delivered on 2nd April, 2002)

CHEPYATOR CHERONO.....APPELLANT

VERSUS

MUSA KIPRONO NGETICH.....RESPONDENT

JUDGMENT

This judgment relates to an appeal lodged by the Appellant against the decision of the Rift Valley Provincial Land Disputes Appeals Committee made on 2nd

April 2002. There were seven grounds of appeal -

- (1) *that the Tribunal erred in law by allowing itself to adjudicate on a matter that it had no jurisdiction to entertain.*
- (2) *that the tribunal misdirected itself in law in not considering the fact that the issue in dispute is basically on ownership which it was not competent to handle.*
- (3) *that the tribunal erred in law in determining contractual issues on which it had no jurisdiction.*
- (4) *that the tribunal erred in law by entertaining a wrong party as the Respondent was not party to the sale agreement and had no locus standi nor is he the administrator of the estate of the vendor, Kiptallam Ngetich (now deceased).*
- (5) *that the tribunal erred in law by not appreciating and considering the appellant's documents pertaining to the sale of the subject parcel of land.*
- (6) *that the tribunal erred in law by not considering the fact that the appellant had stayed on the parcel of land for over 21 years with the vendor and the respondent peacefully and without any interruption.*
- (7) *that the tribunal erred in law by delivering it's Ruling (Award) in the absence of the parties to the dispute.*

Mr. Ombati Learned Counsel for the Appellant argued the grounds of appeal in clusters of grounds 1, 2 & 3. Grounds 4 and 5 as the second cluster and grounds 6 and 7 as the third cluster. The appeal was opposed by Mr. Rodi who urged against the appeal on behalf of the Respondent. The respective submissions and arguments will appear in the following passages of this judgment.

On grounds 1, 2 & 3 of the Appeal

It was submitted by Mr. Ombati that neither the Koibatek Land Disputes Tribunal nor the Rift Valley Provincial Lands Disputes Appeals Committee had the jurisdiction to adjudicate over the suit land. Counsel referred to Section 3(1) of the Land Disputes Tribunals Act, 1990 (No. 18 of 1990) which confers and limits jurisdiction of Land Disputes Tribunals to matters concerning the sub-division of land and boundaries, claims to work on land and trespass to land.

Counsel submitted that the issue in this case was ownership of land, and that the Land Disputes Tribunal had no jurisdiction, that the Appellant is the registered proprietor of the suit land. The land was registered under the Registered Land Act (*Cap. 300, Laws of Kenya*), and that necessary consent under the Land Control Act had been obtained, and for those reasons the Land Disputes Tribunal and the Provincial Lands Disputes Appeals Committee too had no jurisdiction to entertain the dispute.

On grounds 4 & 5

Mr Ombati submitted that the Respondent had no *locus standi* to institute the dispute before the Land Disputes Tribunal or any court. His father with whom the Appellant transacted the land,

had died. He had not taken any letters of administration to enable him to do so. Counsel relied upon the decision of Hon. Mr. Justice Kimaru in Nakuru H.C.C.A. No. 82 of 2001 (*Kimani Muramba vs. Wambui Gikwa*).

On grounds 6 & 7

Mr. Ombati argued that the action was barred by the Limitations of Actions Act, (*Cap 22, Laws of Kenya*). The reference to the tribunal was made 21 years after the transaction of the suit land between the Appellant and the Respondent's father. In addition, the Appeals Committee had no jurisdiction to call further evidence and hear the dispute afresh.

Opposition to the Appeal

On his part Mr. Rodi learned counsel for the Respondent opposed the appeal in its entirety, "*in toto*". His argument was three-fold. **Firstly** that having taken part in the proceedings before both the Land Disputes Tribunal and the Provincial Land Disputes Appeals Committee, the appellant was estopped from arguing that those bodies did not have the necessary jurisdiction to adjudicate and determine the dispute between the parties. **Secondly** the appellant cannot deny and raise issues of competency against the Respondent, and **thirdly** the Koibatek Land Disputes Tribunal and consequently the Provincial Land Dispute Appeals Committee had the necessary jurisdiction and competence to adjudicate and determine the dispute between the parties; that this was a claim in trespass against the appellant for trespass against the Respondents Land Title No. 9/Perkerra 101/9.

On the question of limitation, Mr. Rodi submitted that this was a valid attempt at a counter-claim for adverse possession which could only be entertained on an Originating Summons and not on appeal. These grounds of appeal should therefore fail. Lastly Mr. Rodi reiterated his earlier submission on estoppel that having taken part in the proceedings before the Koibatek Lands Dispute Tribunal, and the Rift Valley Provincial Appeals Committee, the Appellant could not on appeal deny the competence of those bodies. Counsel submitted that the authority cited by the appellant be disregarded as it did not cover matters in this appeal.

Those were the rival Advocates submissions. The appeal raises two issues in my opinion. **Firstly** whether the Rift Valley Appeals Committee, and its subordinate the Koibatek Land Disputes Tribunal had the necessary statutory authority or jurisdiction to entertain and adjudicate upon the land dispute between the appellant and the Respondent in this matter. **Secondly** whether the Rift Valley Provincial Appeals Committee has the necessary jurisdiction to hear parties on an appeal.

I will begin with the second issue, and ask the same question differently - What is the

jurisdiction of a Land Disputes Appeals Committee under the Land Disputes Tribunals Act? This question was put before Mr. Justice L. K. Kimaru in the case of **Kimani Murumba vs. Wambui Gikwa** (*supra*). The learned judge cited **Section 8** of the **Land Disputes Tribunal Act**, which in **Section 8(5)(6) & (7)** provides as follows -

"S. 8 (1) - (4)

(5) The Appeal shall be determined by the Appeals Committee which shall consist of three members appointed under Section 9.

(6) At the hearing of the appeal, the party bringing the appeal shall begin.

(7) After giving each party an opportunity to state his case the Appeals Committee shall determine the appeal giving reasons for its decision,

PROVIDED that the Committee may in its discretion permit the party appealing to reply to the other party's submissions if that submission contains any new matter not previously introduced at the hearing or on appeal."

The learned judge stated that Section 8(7) contemplated the Appeals Committee would determine an appeal on the strength of submissions of the parties, and on the basis of the record from the Land Disputes Tribunal and not call for new evidence. I entirely agree with the learned judge's appreciation of the provision, and I would emphasise that the Appeals Committee committed an irregularity in its proceedings on appeal. It has no mandate on appeal to call for or hear any evidence at all. I would allow the appeal on the ground above.

There is however a more grave reason for allowing the appeal herein. The jurisdiction of the Land Disputes Tribunals is set out in Section 3(1) of the Land Disputes Tribunals Act, 1990 (No. 18 of 1990). **Section 3(1)** says -

3(1) Subject to this Act, all cases of a civil nature involving disputes 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."

Land is defined by Section of said Act to mean -

"agricultural land" as defined by Section 2 of the said Control Act, whether or not registered under the Registered Land Act."

According to Mr. Rodi's submission, the Koibatek Land Disputes Tribunal had jurisdiction to adjudicate the dispute because the question was one of trespass - that the Appellant had trespassed

upon the Respondent's father's land. This could however not be so, once a person has a title to land, and until that is challenged and cancelled by a court of competent jurisdiction, the occupation of that land by the registered owner cannot be regarded as trespass. No one can be said to trespass on his own land or goods! It is clear from the record before the Rift Valley Provincial Appeals Committee that the Respondent is a very sad and aggrieved person, recalling to memory how his deceased father helped the appellant in good faith and he later turned out to be "**Nyoka**" (*a snake*) to them.

The Respondent's feeling is perhaps understandable from a social and humanitarian point of view. In law however, he was advised to follow wrong avenue or channel in pursuing the appellant for his father's land. The law in this regard is clear. Section 159 of the Registered Land Act vests the jurisdiction on determining questions of title or ownership of or interests in land such as leases or charges, in the High Court unless the value is less than K£25,000=00 in which event the court of the Resident Magistrate may adjudicate on the matter! The Lands Disputes Tribunal jurisdiction is limited and restricted to those areas specified in Section 3(1) of the Land Disputes Tribunals Act. Clearly the Appeals Committee has no jurisdiction to -

"award a parcel of land out of this plot measuring 14.3 acres being his share of the Plot in respect of Shs 5,719/= at a rate of Kshs 400/= per acre, the rate was not contested at the hearing."

I am clear in my mind that the award of the Appeals Committee was what they thought was fair and perhaps right. That may well indeed be so. The Appeals Committee has however no such jurisdiction. Any questions for rectification, or cancellation of title are matters for determination by the High Court under Section 143 of the Registered Land Act - on the grounds of mistake or fraud. The Appeals Committee's decision that -

"The Elders (Committee) also orders the title deeds earlier issued be cancelled and replaced by the new ones in accordance with this Ruling" had no basis in law and was clearly without the jurisdiction of the Tribunal.

For those reasons the appeal herein succeeds. The decision of the Koibatek Land Disputes Tribunal and that of Rift Valley Provincial Appeals Committee is hereby quashed and set aside.

These being touchy land matters, I would order that each party shall bear his own costs.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 14th day of May 2010

M. J. ANYARA EMUKULE

JUDGE