



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISUMU**

**Civil Appeal 55 of 2007**

**JULIUS ODUOR ODHIAMBO administrator of the estate**

**Of the late NYANDO AYO O OGUDA.....APPELLANT**

**VERSUS**

**REGINA AKOTH OMONDI.....RESPONDENT**

**JUDGMENT**

This appeal arises from the decision, findings and determination of the Provincial Lands Dispute Appeal Committee Nyanza made on the 23<sup>rd</sup> May 2007, in claim number 54 of 2000 in which the appellant herein JULIUS ODUOR ODHAIMBO, had appealed against the decision of the District Land Tribunal in Siaya Land Dispute case number Siaya/494/98 made in favour of the respondent Regina Akoth Omondi.

It would appear from the record of the District Tribunal that there was a decision made in favour of the respondent on the 2<sup>nd</sup> September 1999 and a second decision also made in favour of the respondent on the 31<sup>st</sup> March 2000.

It is unclear whether the appeal made to the Appeals Committee was in respect of the decision of the 2<sup>nd</sup> September 1999 or that of the 31<sup>st</sup> March 2000 or both. However, it is apparent that the appellant was dissatisfied with the entire decision of the District Land Tribunal Board at Siaya.

In its decision of the 2<sup>nd</sup> September 1999, the District Tribunal ordered as follows:-

“The land registrar and the surveyor to go to the site and curve the disputed land from the PN 1023/Sega/ North Ugenya starting from the tarmac road upward up to the shop of the claimant. The area assistant chief who was there during the site visit should help the surveyor to identify the new boundary of the disputed land as indicate during the tribunal’s site visit. The cost of such transaction to be met by the claimant”.

In the decision of the 31<sup>st</sup> March 2000, the Tribunal ordered that:-

“The land Registrar to remove the name of Nyando Ayoo from PN 1023/Sega/ N. Ugenya and register the name of Regina Akoth Omondi the claimant. The cost of such transaction to be met by the claimant”.

The record of the tribunal shows that the second decision was prompted by the fact that the then objector Nyando Ayoo (now deceased) on whose behalf the appeal to the Appeal Committee was made had complained to the area District Commissioner regarding the tribunal members and their decision of the

2<sup>nd</sup> September 1999.

Be that as it may, the Appeals Committee heard both the appellant and the respondent and made the findings that:-

- (a) Regina has been using the land from 1999 to date without any complaint
- (b) Title deed was given to Nyando Ayoo Oguda arbitrarily
- (c) The sub-division ought to have been done in good time.

In effect, the appeal was dismissed with costs if any.

This appeal is against the said findings and decision and is based on five grounds contained in the memorandum of appeal filed herein on the 21<sup>st</sup> June 2007.

The grounds are that:-

- (i) The tribunal and the Provincial Lands Disputes Appeals Committee exceeded its mandate and jurisdiction under Section 3 (1) of the Lands Dispute Tribunal Act by determining issues of title and ownership of land.
- (ii) The registration being challenged constituted a first registration under the provisions of section 143 of the Registered Land Act Chapter 300 Laws of Kenya in respect of which neither the tribunal nor the provincial lands Disputes Appeals Committee had the powers to grant the orders granted in respect of the said registration.
- (iii) Without a grant of letters of administration of the estate of Paul Mark Omondi ( if he died intestate) or a grant of probate of the estate of Paul Mark Omondi (if he died testate) Regina Akoth Omondi had no locus standi to commence proceedings before the tribunal and the said proceedings and resultant orders and award are null and void ab initio.
- (iv) The tribunal flouted the mandatory requirements of Section 4 (1) of the land Dispute Tribunal Act.
- (v) The Provincial lands Dispute Appeals Committee Nyanza flouted the mandatory requirements of Section 8 (6) and 8 (7) of the land Dispute Tribunal Act.

At the hearing of this appeal, M/s Pandit learned Counsel for the appellant chose to commence with ground three of the appeal by arguing that the respondent proceeded with the dispute before the District Tribunal and the Appeals Committee on behalf of her late husband yet she had not obtained the necessary grant of the letters of administration thereby depriving her of the necessary "locus standi".

Consequently, the decisions of the District tribunal and the Appeals Committee were all null and void.

Mr. Olel, learned Counsel for the respondent argued that the issue of "locus standi" on the part of the respondent could not be raised at this juncture because it was the appellant who brought action against the respondent and has now raised the issue simply because he lost the case.

The records from the District tribunal are not in favour of Mr. Olel's contention.

It is evident therefrom that the dispute was filed by the respondent on behalf of her late husband Paul Mark Omondi against Nyando Ayoo Oguda who has since passed away but was represented in the appeal before the appeals Committee by the appellant in his capacity as the administrator of the estate of the said Nyando Ayoo Oguda.

However, and in this court's view, whether the respondent had or had no "locus standi" to bring the claim against the appellant was a matter of fact which could only have been decided at the time of the hearing of the dispute.

The appellant did not raise the issue at the opportune time. He cannot be allowed to raise it at this juncture for it is a matter of fact and law.

In the case of Selesia M'Aribu =vs= Meru County Council Nyeri Civil Appeal No. 183 of 2002, the court of Appeal implied that "locus standi" is both an issue of fact and law.

This being the case, the issue ought to have been raised by the appellant at the hearing of the dispute either as a preliminary point of law or as a fact which required evidential proof. The appellant would also have refused to participate in a quasi – judicial process initiated against him by a person without the necessary "locus standi". It is clear from the underlying facts that even though the respondent did not display any grant of letters of administration respecting her late husband's estate she had the necessary interest in the matter. She was not a meddlesome interloper to invoke the jurisdiction of the tribunal in a matter that did not concern her. She was a person aggrieved by what she considered to be an unlawful occupation of the disputed parcel of land by the appellant. From all the foregoing, the third ground of this appeal is unsustainable.

In arguing the first ground, M/s Pandit, contended that both the tribunal and the appeals committee exceeded their jurisdiction by purporting to determine the ownership of the land which is not provided for under Section 3 of the Land Dispute Tribunal Act No. 18 of 1990.

M/s Pandit argued that there was already a title to the land and that it was a first registration which could not be cancelled by the tribunal neither could the land be sub-divided as ordered by the Appeals Committee.

In response, Mr. Olel argued that the tribunal had the necessary jurisdiction under Section 3 (1) (a) of the aforementioned Act and that title to the land is an issue of fact which cannot arise in this appeal.

Indeed, Section 8 (8) of the land Disputes Tribunals Act provides that the decision of the Appeal Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.

And Section 7 (9) of the act provides that either party to the appeal may appeal from the decision of the Appeal Committee to the High Court on a point of law.

So, whereas the issue relating to title may be that of fact, the issue pertaining to the tribunal's jurisdiction to deal with ownership of land which is registered is a point of law which may render a decision of the tribunal null and void.

Jurisdiction is everything and where a court or tribunal exercises a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgment is given (See, Owners of the Motor Vessel "Lilians S" =vs= Caltex Oil (K) Ltd)

The jurisdiction of a land tribunal is limited to what is specified under Section 3 (1) of Act No. 18 of the 1990 in 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”.

Therefore, any decision of a land tribunal made in excess of or without necessary jurisdiction would be null and void ab initio. There would be nothing to appeal from and if there was an appeal to the Appeals Committee, the decision of the committee would also be null and void.

A tribunal which purports to adjudicate on a matter of ownership of registered land would be acting in excess of jurisdiction.

Herein, to determine whether or not the Siaya Land Disputes Tribunal and by extension the Provincial Appeals Committee exceeded the jurisdiction provided by Section 3 (1) of Act No. 18 of 1990 one need only look at the proceedings of the tribunal contained in the record of appeal.

The question of jurisdiction touches not only the legality of the tribunal's decision but also the merit of the decision.

The major consideration that governs this court on whether to confirm or to disturb the decision of the Appeals Committee and by extension that of the tribunal is whether the decision is right or wrong on the basis of the law.

Jurisdiction is purely a matter of law and lack of it renders any decision of an adjudicating tribunal null and void.

Indeed, in the case of Sir Ali Bin Salim =vs= Shariff Mohamed Shary (1938) KLR 9, it was stated that:-

“If a court has no jurisdiction over the subject matter of the litigation, its judgments and orders, however precisely certain and technically correct, are mere nullities and not only voidable, they are void and have no effect either as estoppel or otherwise, and may not only be set aside at any time by the court in which they are rendered, but be declared void by every court in which they may be presented. It is well established law that jurisdiction cannot be conferred on a court by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction”. (See also Republic =vs= Chairman Land Disputes Tribunal, Kirinyaga District & Another ex-parte Kariuki (2005) 2 KLR 10)

On perusal of the tribunal's and the Appeals Committee proceedings it becomes obvious that the two bodies adjudicated on the ownership of the material parcel number 1023/Sega / North Ugenya even though other issues were raised on the periphery. This explains the reason behind the tribunal's two distinct decisions i.e. one dated 2<sup>nd</sup> September 1999 and another dated 31<sup>st</sup> March 2000. Making two distinct decisions on the basis of one and the same matter was highly irregular and contrary to the provisions of the Land Disputes Tribunal Act No. 18 of 1990. In its decision of the 2<sup>nd</sup> September 1999, the Tribunal ordered that the land Registrar and the surveyor to visit the site and curve the disputed land from parcel number 1023/Sega / North Ugenya.

On the other hand, the decision of the 31<sup>st</sup> March 2000 ordered the Land Registrar to remove the name of Nyando Ayoo (Appellant) from the material parcel of land and have it registered in the name of Regina Akoth Omondi ( Respondent)

Whereas, the first decision smacks of an attempt to sub – divide the land, the second decision was an outright attempt to alter the register and have the respondent registered as the proprietor of the entire parcel.

The appellant (Nyando Ayoo through Julius Oduor Odhiambo) was aggrieved by the tribunal's decisions. He appealed against them to the Appeals Committee which dismissed the appeals. The dismissal of the appeal by the Appeals Committee was in effect confirmation of the tribunal's decisions. The appeals Committee observed that the appellant obtained his title deed arbitrarily and that the sub-division of the land ought to have been done in good time.

In the case of Jotham Amunavi =vs= the Chairman Sabatia Division Land Disputes Tribunal and Another

Civil Appeal No. 256 of 2002, the Court of Appeal observed that if the implementation of the decision of the tribunal entails the sub division of the suit land into two parcels opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre, its clear that the proceedings before the tribunal related to both title to land and to beneficial interest in the suit land and such a dispute is not within the provisions of Section 3 (1) of the land Disputes Tribunal Act as such dispute can only be tried by the High Court or by the Resident Magistrate's court where such latter court has jurisdiction.

From all the foregoing, it is quite evident that both the tribunal at Siaya and the provincial Appeals Committee acted in excess of jurisdiction. Consequently, their respective decisions were null and void ab initio.

On that ground alone, this appeal must and is hereby allowed with the result that the decision of the Appeal Committee is set aside and /or quashed along with that of the Tribunal. The need to consider the remainder of the grounds of appeal does no longer arise.

The appellant is entitled to the costs of the appeal.

Ordered accordingly.

Dated, signed and delivered at Kisumu this 23<sup>rd</sup> day of October 2009.

**J. R. KARANJA**

**JUDGE**

JRK/aao