



**Wanene v Merit (Environment and Land Appeal E034 of 2021)
[2024] KEELC 5888 (KLR) (16 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5888 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E034 OF 2021
MN GICHERU, J
SEPTEMBER 16, 2024**

BETWEEN

JOSEPH MUIGAI WANENE APPELLANT

AND

LANKISA OLE MERIT RESPONDENT

JUDGMENT

1. The appellant in his undated memorandum of appeal filed in court on 8/12/2021 seeks the following orders.
 - i. That the judgment of the Land Disputes Tribunal in Kajiado Case No. 0112 of 2001 be set aside and an order be made that the whole judgment was irregular, null and void and further declare the appellant to be the legal owner of parcels of land known as Kajiado/Kaputiei-North putiei-North/4098}and 4099.
2. The four grounds of appeal are as follows.
 - a. The tribunal erred in law and in fact in its holding that proper service was effected upon the appellant to attend the tribunal leading to the judgment subsequent of the appeal.
 - b. The tribunal erred in law and fact in its analysis of evidence and the law applicable thereby making wrong conclusions and deductions.
 - c. The tribunal totally misapprehended the facts of the case leading to erroneous application of the facts into law.
 - d. The tribunal did not have jurisdiction to entertain the case.
3. According to the appellant, he bought the suit parcels from the respondent and was issued with title deeds in the year 1995. He does not have the sale agreement and other documents to support the title



deeds. The respondent filed a case at Kajiado Land Disputes Tribunal in Case No. 0112/2001 where the tribunal made the following orders.

- i. The defendant to surrender the title deeds back to the plaintiff free from any encumbrances.
 - ii. The plaintiff to refund the Kshs. 70,000/= which he had received for the sale of the land.
 - iii. The subdivision to be cancelled and the original number Kaputiei-North/609 to be maintained.
 - iv. We now request Senior Resident Magistrate Court Kajiado to confirm the award and order the District Surveyor to amalgamate the three parcel Numbers that is Kaputiei-North putiei-North/4098}, 4099 and 4100.
 - v. We further request the Hon. Senior Resident Magistrates Court to order the District Registrar Kajiado to cancel the said subdivision and the resulting title deeds to maintain the original status that is Kaputiei-North/609 and issue the plaintiff with the said title deed.
 - vi. The aggrieved party to appeal to the Provincial Land Disputes Committee at Nakuru within 30 days from the date of this ruling.
4. On 2/5/2023, the court gave directions in four aspects of proceedings before the tribunal, service on the appellant by the tribunal, appeal to the Appeals Committee and documents to support the title deeds. The appellant has since clarified that proceedings are not available, that there was no appeal to the Appeals Committee and no documents to support the title deeds are available. The issue of service on the appellant by the tribunal is not addressed at all.
 5. Counsel for the parties filed written submissions on 21/3/2022 and 28/2/2023 respectively. The issues identified by the respondent's counsel do not tally with the four grounds of appeal or the four issues that the court sought clarification on in the directions dated 2/5/2023. I will treat the four grounds of appeal as the issues and I make the following findings.
 6. On the first issue, I find no evidence at all to enable me make any finding on the issue of service on the appellant. I have no record of proceedings from the tribunal. Without this record, I cannot tell if there was service upon the appellant or not. Failure by the appellant to file a proper record of proceedings has robbed me of the ability to make a finding on this crucial aspect. The appellant has also failed to swear a detailed affidavit on lack of service. Had he done so, maybe I would have been able to make a finding on this issue.
 7. As for the second issue of the analysis of the evidence and arrival at wrong conclusions, I am again unable to make any finding owing to lack of the record or an affidavit by the appellant. The evidence adduced before the tribunal is missing. It was the duty of the appellant to compile a complete record of appeal which he failed to do in this case.
 8. Without the benefit of the proceedings before the tribunal, I am unable to make any finding about the tribunal misapprehending the facts of the case.



9. It is the appellant's case that the tribunal did not have jurisdiction to entertain the case. That may be the case but the appellant had two rights of appeal. The first right of appeal was provided for in Section 8(1) of the *Land Disputes Tribunal Act*. It provided as follows.

" Any party to a dispute under Section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision appeal to the Appeals Committee constituted for the province in which the land which is the subject matter of the dispute is situated."

10. This right, the appellant says, was not exercised. The second right of appeal was to be found in Section 8(9) of the same *Act* which provided as follows.

Either party to the appeal may appeal from the decision of the Appeals committee to the High Court on a point of law within sixty days from the date of the decision complained of": Provided that no appeal shall be admitted to hearing by the High Court unless a judge of that court has certified that an issue of law (other than customary law) is involved".

11. The appellant has not found it necessary to explain why he did not appeal within the timelines that were set by the law. It was very necessary for him to explain because the timelines set by the law for filing an appeal must be complied with. Considering that the award of the tribunal was adopted by the Magistrate's Court on 2nd September 2002, I find that it is not proper to file an appeal nineteen years later in 2021.

12. For the above stated reasons, I find no merit in the appellant's appeal and I dismiss it with costs. It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16TH DAY OF SEPTEMBER 2024.

M.N. GICHERU

JUDGE

