



REPUBLIC OF KENYA



**Chuchu v Gachugu (Environment and Land Appeal 3 of 2017)
[2023] KEELC 553 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 553 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 3 OF 2017**

JO OLOLA, J

FEBRUARY 2, 2023

BETWEEN

DOMINIC MBATIA CHUCHU APPELLANT

AND

ANTHONY KIBANYA GACHUGU RESPONDENT

*(Being an appeal from the decision of the Ruiru District Land Disputes Tribunal
in Ruiru Land Disputes Case No 11 of 2010 delivered on May 14, 2011.)*

JUDGMENT

1. This is an appeal from the Ruiru District Land Disputes Tribunal. The Appellant herein – Dominic Mbatia Chuchu had lodged a complaint being Ruiru Land Disputes Case No 11 of 2010 against the Respondent herein – Anthony Kibanya Gachugu accusing the Respondent of encroaching on his Plot No 184 and proceeding to build rental houses thereon.
2. Having heard the dispute, and in its verdict delivered on May 14, 2011, the Tribunal concluded and gave its verdict as follows:-

Conclusions

The Tribunal after hearing of evidence from all witnesses present and visiting the plots concluded the following:

1. The original Plot No 37 was almost twice the size of the required 30ft x 60ft plots. The Ngei II Kugeria directors were therefore justified in reducing the area by extracting another Plot No 184 from that large Plot No. 37;
2. The directors should have informed the original buyer of Plot No 37 M/s Margaret Njeri of the size of her Plot. Njeri did not testify despite being summoned several times by Tribunal. The Tribunal



concluded that she knew that original Plot No. 37 had been subdivided into two. This would be the reason why she kept away from the Tribunal;

3. Ms Cecily Muringo who sold Plot No 184 to Dominic Mbatia knew all along her plot was as a result of a further sub-division of the original Plot No 37 and she knew she had the support of Ngei II Kugeria directors;
4. Both parties have been trying to outwit each other while withholding vital information from the Tribunal;

Verdict of the Tribunal

Having heard and analysed evidence presented before it the Tribunal decided that a monetary award is called for in this case. This is because all Parties have an element of guilt in the manner the whole issue was handled right from original subdivision of the 10 acres into approximately 200 plots through the time the two ladies M/s Margaret Njeri and M/s Cecily Muringo bought and disposed their plots to the time Anthony Kabanya – the objector developed Plot No 37 and Dominic filed this dispute with the Tribunal.

The Tribunal therefore requests the Chief Magistrate’s Court at Thika to order that the objector Anthony Kibanya Gachugu to pay Dominic Mbatia Chuchu a sum of Kenya Shillings one hundred thousand (Kshs 100,000/=) as compensation for Plot No. 184 which will now cease to exist.

This figure is arrived at after considering the market value of Plots in that area and the purchaser’s price of Plot No 37 of Kshs 150,000/=. It is also noted that Dominic failed to say how much he had paid for Plot No 184 which is smaller than Plot No 37.

This money will be paid through the District Commissioner’s office Ruiru within a period of six months.

Each Party will meet its own costs.”

3. Aggrieved by the said determination the Appellant herein lodged an Appeal being Central Province Land Disputes Appeal No 3 of 2011 seeking to have the award set aside and for him and his witnesses to be given a fresh hearing on the grounds that:
 1. The award was unfair in that it awarded monetary compensation to the Appellant which was grossly low and incapable of enabling the Appellant (to acquire) a plot of land in that vicinity equivalent to Plot No 184 Ngei II Kugeria Plot;
 2. The existence of Plot No. 184 Ngeri II Kugeria was all along and in evidence manifestly acknowledged. It is distinct from Plot No 37 Ngei II Kugeria. It had been unlawfully taken over by Plot No 37 whose owner had combined the Plot No 184 and 37 to make the two one and call it as Plot No 37. All these were deliberate illegal schemes of Anthony Kibanya Gachugu. The maps show the two plots are separate and distinct; and
 3. The verdict favours the person who manipulated to illegally combine Plot No 37 to encompass Plot No 184. This Defendant should not be allowed to benefit by his illegal acts. By further telling the Defendant to pay only Kshs 100,000/= for a plot which can fetch over Kshs 800,000/=:, the verdict of the Tribunal has net effect of causing the Defendant to enrich himself. (The) Defendant/Respondent then benefits from his own folly.



4. As it turned out the Land Disputes Tribunals were abolished following the enactment of the *Environment and Land Court Act, 2011* before the Provincial Appeals Tribunal could hear the Appeal herein. Accordingly and as provided under section 30 of the *Environment and Land Court Act* aforesaid, the Appeal was transferred to this Court for hearing and disposal.
5. I have carefully perused and considered the three (3) Grounds of Appeal as well as the Record of Appeal. I have similarly perused and considered the submissions of the Learned Advocates representing the Parties herein.
6. In his complaint before the Ruiru District Land Disputes Tribunal, the Appellant had accused the Respondent herein of unlawfully encroaching upon his Plot No. 184 Ngei II Kugeria and proceeding without his permission to build rental houses thereon. In support of his case, the Appellant produced a map showing that his plot No. 184 aforesaid was adjacent to the Respondent's Plot No. 37. The Appellant accordingly requested the Tribunal to direct the Respondent to pull down the houses that had been built on the said Plot No. 184.
7. In response, the Respondent denied encroaching on the Appellant's land. It was his case that the said Plot No. 184 did not exist. Just like the Appellant, the Respondent equally produced before the Tribunal a map supporting his position that the said Plot No. 184 did not exist and that it was part and parcel of his own Plot No. 37.
8. Having heard the Parties, the Tribunal directed the Respondent to compensate the Appellant in the sum of Kshs.100,000/= for his Plot No. 184 which they declared would now cease to exist.
9. The defunct Land Disputes Tribunals were created under Section 4 of the now repealed Land Disputes Tribunal Act No. 18 of 1990. Section 3(1) of the said Act provided as follows:

“ Subject to this Act, all cases of a civil nature involving a dispute as to –

 - (a) the division of, or 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.”
10. From a perusal of the record herein, it was clear to me that the Appellant had accused the Respondent of trespassing into his own parcel of land and proceeding to erect residential houses thereon. That being the case the Ruiru District Land Disputes Tribunal was properly seized with jurisdiction when it heard and determined the dispute between the Parties.
11. From their own findings, it was apparent that the Tribunal did establish that Plot No. 184 Ngei II Kugeria was a sub-division of the original Plot No. 37. Apparently concerned that those who sold the two parcels of land had not been forthright with both the Appellant and the Respondent who were the second generation purchasers of the land after the sub-division of the parcels of land, the Tribunal directed that the Respondent compensates the Appellant to the tune of Kshs.100,000/= and further that Plot No. 184 would henceforth cease to exist.
12. Those directions were clearly ultra vires the mandate of the Tribunal. The duty of the Tribunal was to establish whether or not the Respondent had trespassed upon the Appellant's parcel of land and to make appropriate orders to ensure that the Parties respected the boundaries to their respective portions of land.



- 13. However while the Appellant has urged the Court to order that Plot No. 184 be separated from Plot No. 37 Ngei II Kugeria, I was not persuaded that this Court could make such orders in the circumstances herein. From the findings of the Panel of Elders, it was apparent that Plot No. 37 was initially a single plot when it was sold to one Margaret Njeri who later sold it to the Respondent.
- 14. According to the material presented to the Tribunal, the creation of Plot No 184 was an afterthought by the directors of Ngei II Kugeria Company Limited which were the initial owners of the land before they sub-divided the same into various portions for sale. The Tribunal came to the conclusion that the said directors on realizing that some plots of land were larger than others decided to carve out more plots for sale.
- 15. It was however not apparent from the record as to whether the buyers were aware of the sizes of the plots they were purchasing. As it were Plot No. 184 was initially sold to one Cecily Muringo who appeared as a witness before the Tribunal. According to the Panel of Elders, Cecily's evidence before them was incoherent and uncoordinated. She could not remember any dates or figures. A copy of the Sale Agreement between her and the Appellant produced before the Elders shows that she sold the land to the Appellant for an undisclosed amount on June 25, 2008.
- 16. It was not clear from the material presented before the Tribunal whether the Respondent had been made aware of the subsequent creation of the Plot No. 184 prior to his developing the land. It was however apparent from the Appellant's testimony that by the time he took a Surveyor to the subject parcel of land, the Respondent had already built rental houses thereon.
- 17. Arising from the foregoing, I was unable on the basis of the scant evidence availed to the Tribunal to fault the Respondent as to warrant an order to direct him to remove his rental houses from the parcel of land whose time of creation and allocation were unclear.
- 18. It follows that while the Tribunal had clearly exceeded its mandate on the award rendered on May 17, 2011, I was not persuaded that the orders sought herein are warranted. In the premises this appeal is dismissed.
- 19. Each party shall bear their own costs.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 2ND DAY OF FEBRUARY, 2023.

In the present of:

Mr. Muhoho for the Appellant

Mr. Nderi for the Respondent

Court assistant – Kendi

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J. O. OLOLA

JUDGE

