



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELCA NO. 32 OF 2014**

**Formerly NYERI HCCA NO. 208 OF 2010)**

**CHARLES KARIITHI WARUL.....APPELLANT**

**-VERSUS-**

**MARY WANGU NDANDU.....RESPONDENT**

**JUDGMENT**

1. This appeal relates to the award of the Land Disputes Appeals Committee, Central, read to the parties on 3<sup>rd</sup> November, 2010.
2. Through that award, the Appeals Tribunal upheld the award of the Mathira District Lands Dispute Tribunal which was in the following terms:

**“Iriani/Iriani/234 should be transferred to the claimant Mary Wangu Ngando the rightful heir of the land”.**

3. In upholding the decision of the District Tribunal, the Appeals Committee observed:

**“After listening to the respondent and her witnesses we concur with the Mathira District Tribunal that the respondent be given work land on parcel No. Iriani/Kairia/234. The respondent is of advanced age.**

**Children of the respondent i.e**

1. **Geoffrey Maina**
2. **Nicholas Mwangi**
3. **Purity Muthoni**
4. **Anastacia Nyagithii**

**Should join their mother and enjoy the right to occupy the suitland since it was their father’s.”**

4. Aggrieved by the above decision of the Appeals Tribunal, the appellant appealed to this court on the following grounds:
  - (i) That the Appeals Committee erred by not appreciating that it had no jurisdiction to entertain the claim preferred before it as it related to title to land;
  - (ii) That the Appeals Tribunal erred by upholding the decision of the Mathira Land Disputes Tribunal which amounted to transferring the appellant’s parcel of land Iriani/Kairia/234 to the respondent;
  - (iii) That by ordering the respondent to be given land by the appellant, the award amounted to ordering the appellant to subdivide his parcel of land;

(iv) The Senior Resident Magistrate erred by adopting the award before the appeal process was exhausted and

(v) That the award of the Tribunal is incapable of enforcement.

5. The appeal was disposed of by way of written submissions.

6. On behalf of the appellant, it is pointed out that the subject matter of the appeal was registered in the name of the appellant and submitted that **Section 3(1)** of the Land Disputes Tribunal Act (repealed) which provided for the jurisdiction of the Tribunals established under the Act, did not confer jurisdiction on the Tribunals established under the act to confer title to any person.

7. Pointing out that in the circumstances of this case the Tribunal ordered that the parcel of land which was registered in the name of the appellant be transferred to Mary Wangu Ngando (now deceased), the appellant submits that by ordering transfer of the suit land to the deceased, now substituted with Geoffrey Maina Murage, the Mathira District Tribunal and by extension the appeals committee acted without jurisdiction.

8. It is further pointed that the Appeals Tribunal insinuated that there could have been fraud in the transfer of the land to the appellant when it had no jurisdiction to determine issues of fraud

9. The award of the appeals committee is also said to be ambiguous.

10. Ground five was abandoned on grounds that it could be a typing error.

11. On his part, the respondent has contended that the appellant cannot show how or why he got seized of land that belonged to Ngando Mwaniki deceased.

12. Maintaining that a clear case of fraud is apparent in the registration of the appellant as the owner of the suit land, the respondent has invoked the equitable jurisdiction of this court arguing that equity suffers no wrong without a remedy.

13. While admitting that the Tribunal lacked jurisdiction to order transfer of the suit land to the respondent, the respondent urges this court to find the invitation of the appeals Tribunal to the family of the respondent to enter and occupy the suit premises is well within the jurisdiction of this court.

#### **Analysis and determination**

14. In the case of **Joseph Malakwen Lelei & Another V. Rift Valley Land Dispute Appeals Committee & 2 others (2014) eKLR** it was held:

**“Section 3 of the Land Dispute Tribunal Act (repealed) gives jurisdiction to Land Dispute Tribunal to handle claims in the following matters only:-... all cases of civil nature involving a dispute 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,.....evidently the above provisions does not include jurisdiction to deal with issues of determination of title or ownership of registered land.....”**

15. From the evidence adduced before the Tribunal, it is clear that the dispute preferred before the Tribunal related to ownership of registered land. The Respondent claimed that she had the right to eject the appellant from the suit property. The respondent’s claim was premised on her contention that she was the rightful owner of the suit property.

16. The appellant, on the other hand, contended that being the registered proprietor of the suit property; he was entitled to remain thereon.

17. Although the Tribunal on the basis of the evidence produced before it found in favour of the respondent, the appeal herein turns on the following issues:

**1. Whether the appeal was filed out of time hence incompetent?**

**2. Whether the Tribunal had power to hear and determine the dispute before it given the fact that it touched on title to land?**

18. With regard to the 1<sup>st</sup> issue, although **Section 8(1)** of the land Dispute Tribunal Act (repealed) required that the appeal be lodged within 30 days of the decision of the Tribunal, I take judicial notice of a practice that existed concerning appeals, where normally, like in, the instance case, the elders notified the parties of their right of appeal after judgement was read. The court also notified the parties of their right of appeal which was within thirty (30) days from the date the judgement was read.

19. According to the decision of the Court of Appeal in the case of **Chege Macharia v. Francis Kimani Kirimira (2015) e KLR** it appears

that the right of appeal accrues after the judgment is read and not after the date of the award. See the said judgment where it was held:

**“... We are of the considered view that where, as in this case an award had been properly forwarded by the Chairman of the Tribunal but was not yet read when the Act was repealed, the proper course would have been for the magistrate to adopt the award and read it as a judgment of the court to be followed by the usual process of decree and execution and appeal where parties so desire. Such appeals would be to the High Court by dint of clause 13 of the practice direction, the Provincial Appeals Committee also having met their quietus with the repeal of the Act.”**

20. Also see the case of **Benson Maina Thiongo V. Joseph Waweru Mwangi** (2006) eKLR where it was held that the timelines for lodging an appeal provided under **Section 7(1)** and **(2)** of the Land Disputes Tribunal Act, (repealed) do not take away the rights of any party who is dissatisfied with the

award of the Tribunal to appeal to the appeals committee as provided under **Section 8 (1)** of the Land Dispute Tribunals Act (repealed) nor does it take away the further right of appeal to the High Court provided under **Section 8(9)** of the Land Disputes Tribunals Act (repealed).

21. In view of the foregoing, I overrule the objection of the appeal on the alleged time bar.

22. On whether the Tribunal had jurisdiction to hear and determine the dispute preferred before it, having found that the decision turned on ownership of the suit property, which is registered land, I adopt the decision in the case of **Joseph Malakwen Lelei & Another V. Rift Valley Land Dispute Appeals Committee & 2 others** (*supra*) to the effect that **Section 3** of the Land Dispute Tribunals Act, (repealed) does not confer on the Tribunal jurisdiction to deal with issues of determination of title to or ownership of registered land.

23. Since the dispute preferred before the Tribunal could not be determined without considering and determining the rights of the parties to the suit property, which was registered land, I find and hold that the Tribunal lacked jurisdiction to hear and determine the dispute preferred before it.

24. The upshot of the foregoing is that the appeal herein has merit and is allowed as prayed.

**Dated, Signed and Delivered in open court at Nyeri this 5th day of July, 2018.**

**L N WAITHAKA**

**JUDGE**

Coram:

Mr. King'ori h/b for Mr. Kiminda for the appellant

Geoffrey Maina Murage – respondent

Court assistant - Esther