



Mutai (Suing as the legal administrator ad-litem of the Estate of Erastus K Langat - Deceased) v Registrar of Lands Nakuru & 3 others (Civil Appeal 142 of 2007) [2024] KEHC 12719 (KLR) (17 October 2024) (Judgment)

Neutral citation: [2024] KEHC 12719 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 142 OF 2007
SM MOHOCHI, J
OCTOBER 17, 2024**

BETWEEN

SELESTINE CHEPKEMOI MUTAI (SUING AS THE LEGAL ADMINISTRATOR AD-LITEM OF THE ESTATE OF ERASTUS K LANGAT - DECEASED) APPELLANT

AND

**REGISTRAR OF LANDS NAKURU 1ST RESPONDENT
DISTRICT LAND ADJUDICATION OFFICER NAKURU 2ND RESPONDENT
DISTRICT SURVEYOR NAKURU 3RD RESPONDENT
SAMWEL KIPROTICH TOWETT 4TH RESPONDENT**

(Being an appeal against the decision, order and decree of the Rift Valley Province Land Disputes Appeals Committee dated 5th June, 2007)

JUDGMENT

1. The Appellant has appealed to this Court against the award made by the Rift Valley Province Land Disputes Appeals Committee, sitting on Appeal Case No.33 of 2005. In the Amended Memorandum of Appeal dated 24th January, 2024, the Appellant has set out five (5) grounds of appeal to wit: -
 - i. That the Appeals Committee erred in holding that the Appellant did not produce tangible documents to prove his ownership of the land dispute;
 - ii. That the Appeals Committee erred in failing to appreciate that the Respondents had no remittable interests in the disputed land as the same was already vested in the Appellant;



- iii. That the Appeals Committee erred on matters law and lacked jurisdiction and in particular in matters concerning the registration of the disputed land in the names of the Respondent;
 - iv. That the Appeals Committee erred in law and in fact in failing to note and appreciate that the entire suit land parcel belonged to the Appellant in possession and the Respondents had no locus to claim the same and the Court lacked jurisdiction to deal with issues of ownership of land; and
 - v. That the parties pursued the matter in Nakuru ELC No 253 of 2013 where it further emerged that all the Respondents had no claim whatsoever on the suit land.
2. The Appellant prays that the award of the Rift Valley Land Disputes Committee in its Appeal Case No. 33 of 2005 dated 5th June, 2007 be dismissed and set aside with costs and that the titles issued be cancelled.

Brief Facts

3. This matter had originated where the Appellant was summoned to attend a land dispute in Olenguruone Land Dispute Tribunal Case No. 2 of 2004 in a claim filed by seven individuals claiming land ownership and the tribunal ruled in favour of the Appellant on 19th November, 2004. The Appellant thereafter filed a claim Olenguruone Land Disputes Tribunal Land Dispute No. 15 of 2004 against those individuals and sought a title deed over the whole parcel. An award in favour of the Appellant was made by the Tribunal dated 30th May, 2005.
4. The Respondents in the dispute were aggrieved and filed an appeal before the Land Disputes Committee Rift Valley Province Land claiming and ownership over LR No. Nakuru/Oleguruone/Cheptuech Plot Nos 589, 595, 594, 596 and 592. The tribunal heard the matter and decided against the Appellant and also set aside the decision of 19th November 2004 which was adopted by Molo PMCC No. 3 of 2004 making the award subject to this appeal.
5. It is worth noting that the family of the Appellant filed ELC No. 253 of 2013 appealing the award of the Appeals Committee wherein the Court (Ombwayo J) on 23rd February, 2023 dismissed the Appeal for want of jurisdiction as the law applicable then was that the appeals from the Appeals Committee were to the High Court.
6. The Appellant had filed this Appeal on 3rd August 2007 but for some reason the same was not prosecuted. Nevertheless, directions on the appeal had not been given and on 6th October, 2023, the Court allowed the Application dated 14th July, 2023 which sought inter alia to revive and reinstate the appeal.
7. On 25th September, 2023 the Court allowed the Appellants Application dated 22nd September, 2023 for substituted service. On 2nd July, 2024 counsel for the Appellant appeared, confirmed that he had filed submissions and that the Respondent's had never appeared. He also filed affidavit of service served with the mention notice filed on 1st July, 2024. The Appeal was then reserved for judgment.
8. The Appeal was canvassed by way of written submissions. The Appellant in the submissions filed on 13th March 2024 submitted that the Appeal is not opposed and should be allowed as prayed. It was their argument that by virtue of Section 78 of the Civil Procedure Act the Court has the power to determine the Appeal.



Analysis

9. I have considered the proceedings and the evidence tendered before the Provincial Land Disputes Appeals Committee, the award, the amended grounds of Appeal, the Record of Appeal and the Appellant's submissions. I have also considered the applicable laws on the key issues raised pertaining to this Appeal. The issues for determination are therefore:-
- a. Whether the Land Disputes Appeals Committee had the jurisdiction to determine the matter;
 - b. Whether this Court has jurisdiction to cancel titles.
10. This is a second appeal and pursuant to Section 8 (8) of the Land Dispute Tribunal Act (repealed Cap 303A now repealed by the Environment Land Court *Act No. 19 of 2011*), this Court can only determine matters of law and not fact.
11. On the first issue, the mandate of the Land Disputes Tribunal and by implication the Land Disputes Appeals Committee is derived from the Land Disputes Tribunals Act.
12. Section 3 of Land Disputes Tribunals Act provided that: -

“Limitation of jurisdiction, etc

3.

- (1) 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.”

13. The import of Section 3 of the Land Disputes Tribunals Act is that the Appeals Committee could not determine a matter to do with boundaries, occupation or trespass to land. The seven individuals, the claimants, claimed ownership of the subject parcels and claimed to have purchased the plots legally but faced hostility from the Appellant and his sons when they attempted to occupy and develop the land.
14. In the case of Joseph Malakwen Lelei & another Vs Rift Valley Land Disputes Appeals Committee & 2 others [2014] eKLR the Court of Appeal restated the law relating to jurisdiction of Land Disputes Tribunal and stated as follows:

“On the issue of jurisdiction, we note that the law on this issue is settled and we do not need to belabour it. Section 3 of the Land Disputes Tribunal Act (repealed) gives jurisdiction to the Land Disputes Tribunal to handle claims in the following matters only:

“3

- (1) 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 on in common,



- (b) A claim to occupy, or work land or
- (c) Trespass to land.”

Evidently the above provision does not include jurisdiction to deal with issues of determination of title to or ownership of registered land... Having found that the Tribunal and the Appeals Committee lacked jurisdiction to arbitrate on the matter before them, then all other grounds become moot. We say so because it is trite that where a court or tribunal takes upon itself to exercise a jurisdiction which it does not possess, its proceedings and decisions are null and void. It then follows that every other proceeding, decision, or award that results from such a process must be construed as a nullity. See *Macfoy v. United Africa Co. Ltd* 1961 3 All ER 1169; *Re Continental Credit Finance Ltd* [2003] 2 EA 399; *Owners of Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Limited* (1989) KLR 1.”

15. The said dispute was primarily on ownership of land arising from an alleged purchase by the claimants and the Appellant’s claim of ownership pursuant to Licence No. 759 issued under the Crown Lands as Oleguruone Native Land Settlement Area of 1958 which gave rise to Nakuru/Oleguruone/Cheptuech Plot No 365 which was then subdivided in the parcels that were bought by the claimants.
16. Bearing in mind the provisions of Section 3 (1) of the Land Disputes Act (now repealed) it is clear that Provincial Land Disputes Appeals Committee exceeded its jurisdiction on the issue of ownership.
17. On the second issue, the Appellant has sought that the 1st, 2nd and 3rd Respondents be ordered to cancel the title deeds issued on subdivided portions of the suits land as follows: -
 - a. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 596 - Taplega wife of Ngotemet
 - b. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 595 - Kiplagat Kosgei
 - c. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 593 - Musa Kilagat Seren
 - d. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 592 - Richard Cheruiyot Koech
 - e. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 665 - Richard Kipritich Cheruiyot
 - f. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 243 - Julius Kiplagat Tonui
 - g. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 591 - Taprandich wife of Sang
 - h. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 594 - Langat A. Maritim
 - i. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 589 - Kipkurui A. Moo
 - j. LR No. Nakuru/Oleguruone/Cheptuech Plot No. 598 - Name unknown be cancelled and issued in the name of Appellant Erastus Kiptonui Langat
18. The Appellant further sought that the Court does order that, the titles be issued in the name of the Appellant. This Appeal was filed in the year 2007 when this Court still had jurisdiction to handle appeals from the Appeals Committee however, cancellation of the titles was never an issue for determination before the Appeals Committee.
19. Further following the promulgation of *the Constitution* and the enactment of Environment and *Land Act*, on matters pertaining cancellation of titles the jurisdiction of the High Court is ousted under Article 162(5)(b) of *the Constitution* and Section 13 (2) of the Environment Land Court Act.



20. My finding on jurisdiction of the Appeals Committee and Section 8 (8) of the Land Dispute Tribunal Act found it not necessary to address the remaining grounds of appeal.

Disposition

21. The Appeal is hereby partly allowed. The decision of the Rift Valley Province Land Disputes Appeals Committee dated June 5, 2007 is hereby set-aside.

It is so ordered.

SIGNED DATED AND DELIVERED ON THIS 17TH DAY OF OCTOBER, 2024

MOHOCH S.M.

JUDGE

