



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

**CIVIL APPEAL NO. 61 OF 2013**

**NOEL MWATATA MWAKITELE.....APPELLANT**

**VERSUS**

**JULIUS MWANGATA.....RESPONDENT**

**AND**

**JAMES MOSES MUGO.....INTERESTED PARTY**

**JUDGMENT ON APPEAL**

*(Being an appeal from the decision of the Bahari Land Disputes Tribunal in Bahari Land Dispute Case No. 85 of 2006 and the decree in Kilifi SRMCC LDT Case No. 5 of 2007)*

*(Respondent filing suit before the Land Disputes Tribunal claiming to have purchased 6 acres of the disputed land in the year 1978; disputed land having been sold and transferred to the appellant; appellant proceeding to subdivide the land into two parcels in the year 1993 and selling one portion to a Third Party; Tribunal holding that the land had already been sold to the respondent and could not be resold to the appellant; Tribunal directing that title be issued to the respondent; the land awarded to the respondent all along having been in the registration of the Third Party who was never made a party to the case before the Tribunal; wrong for Tribunal to award the land to the respondent without hearing the registered proprietor; in any event, the Tribunal not having jurisdiction to hear a dispute over the ownership and title to land; appeal allowed)*

1. The dispute between the appellant and the respondent was commenced before the Bahari Land Disputes Tribunal (Bahari LDT). Land Disputes Tribunals were established under the Land Disputes Tribunal Act, Chapter 303A, Laws of Kenya (LDTA) (repealed by the Environment and Land Court Act, 2011). The jurisdiction of the Land Disputes Tribunal was set out in Section 3 (1) of the LDTA which provided as follows :-

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.

2. Through a complaint lodged before the Bahari LDT, the respondent contended to have purchased 6 acres of land in the year 1978 from one Saidi Kandondo and that he took possession of the same. He claimed that in the year 2002, the appellant came to the land and started clearing it. On the other hand, the appellant stated that he purchased from Saidi Kandondo, in the year 1987, a portion of land from the land parcel Tezo/Roka/273 (actual registration being Kilifi/Roka/273). He averred that the consent of the Land Control Board was applied for and obtained to have the land subdivided into two portions of 6 acres each. These two portions were registered as Kilifi/Roka/1202 and Kilifi/Roka/1203 (hereinafter simply referred to as land parcels No. 1202 and 1203) and the latter parcel of land was subsequently transferred to him. At a later date, he subdivided this parcel No. 1203 into two portions, that is the land parcels Kilifi/Roka/1243 and Kilifi/Roka/1244 (hereinafter simply referred to as the land parcels No. 1243 and 1244) and he transferred the land parcel No. 1243 (measuring 5 acres) to the name of Hamilton Mwandawiro Samboja. After hearing the dispute, the Bahari LDT held that the sale to the appellant was wrongful since the land had earlier been sold to the respondent in the year 1978. The Bahari LDT directed the Land Registrar to issue the respondent with a

title to 6 acres from the parcel No. 1243. The award of the Tribunal was adopted as the judgment of the Court under Section 7 of the LDTA in Kilifi SRMCC Land Dispute Case No. 5 of 2007. Section 7 of the LDTA required decisions of the land dispute tribunals to be filed in court and for judgment to be entered so that a decree may issue for execution.

3. Under Section 8 of the LDTA, one could appeal a decision of the LDT to the Appeals Committee which was constituted within the Province where the land was situated. Being aggrieved, the appellant filed an appeal to the Appeals Committee. The Appeals Committee had not yet finalized the matter by the time the LDTA was repealed in the year 2011 and the appeal was therefore transferred to this Court for determination.

4. In the course of the proceedings before this court, one James Mugo Maina, applied to be enjoined as an interested party to this appeal. In his application, he stated that he is the lawful owner of the land parcel Kilifi/Roka/1243 having purchased it from Hamilton Mwandawiro Samboja and he demonstrated that he acquired title on 19 April 2012. It is instructive to note that Hamilton Mwandawiro Samboja, was the registered proprietor of the land parcel No. Kilifi/Roka/1243 when the case before the Tribunal was being heard, but he was never made a party to the Tribunal proceedings. The Tribunal thus awarded land to the respondent without having the registered proprietor of that land as a party. In his Memorandum of Appeal, the appellant has averred that the finding of the LDT was erroneous.

5. I invited counsel to file written submissions in respect of the appeal. Counsel for the appellant and the interested party filed their submissions but none were filed by counsel for the respondent. In their submissions, counsel for the appellant and the interested party, submitted that the Tribunal fell in error as the respondent did not display any consent from the Land Control Board, yet the land was agricultural, and under the Land Control Act, Chapter 302, Laws of Kenya, it was necessary for consent of the Land Control Board to be issued. They further submitted that there was nothing wrong in the purchase by the appellant of the suit land. It was submitted that the interested party has acquired good title to the suit land.

6. I have assessed the appeal and considered the submissions of counsel. The first problem that I have with the decision of the Tribunal is on jurisdiction. The dispute that was presented before the Tribunal related to title and a decision needed to be made on who ought to obtain title to the disputed land. A dispute over title was not among the types of disputes that the Tribunal had jurisdiction to hear. The dispute before the Tribunal was not among those listed in Section 3 (3) of the Act, and it follows that the Tribunal proceeded to hear a case that it had no jurisdiction to hear. The result of that is that the Tribunal decision is null and void for want of jurisdiction.

7. But even assuming that the Tribunal had jurisdiction, it was wrong for the Tribunal to award the land parcel No. 1243 to the respondent. I have gone through the record and the documents of title. I note that the land parcel No. 1203 was transferred to the appellant on 1 August 1989. I have also seen that the land was subdivided into the parcels No. 1243 and 1244 and titles for these parcels of land were issued in February 1994. I have seen that Hamilton Mwandawiro Samboja was registered as proprietor of the land parcel No. 1243 on 25 February 1994. This same land is the one that the respondent claimed and awarded by the Tribunal. However, Hamilton Mwandawiro Samboja, was not made a party to the Tribunal proceedings. It follows that the Tribunal awarded to the respondent land that was in the registration of a person who was not before the Tribunal and who was not given a chance to defend his title. This was a grave error on the Tribunal.

8. For the above reasons, I allow this appeal. I proceed to set aside the award of the Tribunal and the decree of the Kilifi SRMCC LDT No 5 of 2007. The respondent will pay the costs of this appeal and any costs of the proceedings before the Tribunal.

9. Judgment accordingly.

**DATED AND DELIVERED THIS 3<sup>RD</sup> DAY OF JUNE 2020**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**