



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

CIVIL APPEAL NO. 138 OF 2013

MUTHIKE MWANIKI APPELLANT

VERSUS

GENESIO KUBUNYA NJAGI RESPONDENT

(BEING AN APPEAL AGAINST THE DECISION OF THE MWEA LAND DISPUTES TRIBUNAL IN ARBITRATION CASE NO. D26D/VOL.V/76 – MWERUA/KABIRIRI/1109 DATED 24TH JULY, 2006 AND ADOPTED ON 25TH JANUARY, 2007 BY THE RESIDENT MAGISTRATE’S COURT AT WANGURU IN ARBITRATION CASE NO. 26 OF 2006)

JUDGMENT

This matter has a long history but for purposes of this judgment, I can only go back to the directions issued by the Court of Appeal on 13th December 2012 when it gave the following directions:-

“The Land Disputes Act No. 18 of 1990 having been repealed thus abolishing the Provincial Land Disputes Appeal Committee, if the High Court grants the application, then pursuant to legal Notice No. 1617 of 9th February 2012, it shall direct the appellant to file his appeal against the award of the Tribunal in the High Court”

This Court having granted the appellant leave to file the appeal out of time, then the above directions by the Court of Appeal have to be complied with.

That said, the dispute between the two protagonists in this appeal started in 2006 when the respondent filed a dispute at the Mwea Land Disputes Tribunal (the Tribunal) in Case No. D/26 D/VOL V/76 against the appellant over ownership of the land parcel No. MWERUA/KABIRIRI/1109 (the suit land) and after hearing the parties, the Tribunal ordered that the said land be awarded to the respondent and that the title deed issued to the appellant be revoked. The Resident Magistrate’s Court adopted that award and issued a decree to that effect as it was mandated to do under the now **repealed Land Disputes Tribunal Act** and the appellant’s title deed was revoked and a title deed issued to the respondent.

The above is the genesis of this appeal in which the appellant has raised the following three grounds:-

- 1. That the Mwea Land Disputes Tribunal lacked jurisdiction to adjudicate on a dispute involving ownership or title to land.***
- 2. That the Mwea Land Disputes Tribunal erred in law when it, without jurisdiction, purported to deny and abrogate the registered proprietor’s (Appellant’s) statutory rights over the parcel of land comprised in Title number MWERUA/KIBIRIRI/1109 by ordering the revocation of the said title.***

3. ***That the Mwea Land Disputes Tribunal erred in law when it purported to entertain and determine proceedings in respect of which the time for bringing such proceedings had lapsed and which proceedings it was barred from entertaining, even if it had jurisdiction to do so by dint of the law of Limitation of Actions.***

When counsels appeared before me for directions on 27th January 2016, it was agreed that the appeal be canvassed by way of written submissions which were filed as directed.

I have considered the appeal, the record herein and the submission by counsel.

In my view there are only two issues for consideration in this appeal and these are:-

1. ***Whether the Tribunal had the requisite jurisdiction to determine a dispute involving registered land and issue the orders that it did, and***
2. ***Whether in doing so, the Tribunal entertained a dispute that was in fact caught up by the law of limitation.***

JURISDICTION

In entertaining the dispute between the parties herein, the Tribunal was exercising powers bestowed upon it by the now **repealed Land Disputes Tribunal Act. Section 3 (1)** of that Act circumscribed the Tribunal's jurisdiction as follows:-

“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 determined by a Tribunal established under Section4”***

The dispute herein involved title to registered land and there is a long line of authorities from the Superior Courts to the effect that a Tribunal exercising its jurisdiction under the repealed Land Disputes Tribunal Act had no jurisdiction to entertain a dispute involving title to registered land.

One such case is **JOTHAM AMUNAVI VS CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL NO. 256 of 2002** where the Court stated that:-

“It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of Section 3 (1) of the Land Disputes Tribunal Act. By Section 159 of the Registered Land Act such a dispute can only be tried by the High Court or by the Resident Magistrate's Court in cases where such Court has jurisdiction”

As was held in the case of **OWNERS OF THE MOTOR VEHICLE “LILLIAN S” VS CALTEX OIL (KENYA) LTD 1989 K.L.R 1 at page 14**

“Jurisdiction is everything, without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A Court of law downs its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”

Similarly, in **DESAI VS WARSAMA 1967 E.A 351**, it was held that a Court cannot confer jurisdiction upon itself and where a Court assumes jurisdiction and proceeds to hear and determine a matter not within its jurisdiction, those proceedings and determination are a nullity. That caution of course applies to a Tribunal such as the one that handled the dispute involving the parties herein which exceeded its jurisdiction in not only determining a dispute that did not fall under the provisions of **Section 3 (1) of the repealed Land Disputes Tribunal Act** but also by ordering the revocation of a title deed which could only

be done by the High Court. Counsel for the respondent had submitted that since the appellant acquired the title to the suit land illegally, it could be cancelled and was indeed properly cancelled. It is true that a title deed illegally obtained through fraud can be cancelled. It may even be true that the appellant obtained the title illegally. The bottom line however is that only the High Court could investigate such a claim and order revocation. The Tribunal had no such jurisdiction and even if there was merit to do what it did, all that was in excess of its jurisdiction and therefore null and void and of no legal effect. That is enough to dispose of this appeal.

The appellant has however also raised the issue that the Tribunal entertained a dispute that was statute barred under the **Limitation of Actions Act** which provides in **Section 7** as follows:-

“An Action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action occurred to him or, if it first accrued to some person through whom he claims, to that person”

The Tribunals established under the now **repealed Land Disputes Tribunal Act** were enjoined by **Section 13 (3)** of that Act to apply the law of limitation. That section provided as follows:-

“For avoidance of doubt, it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the Limitation of Actions or to any proceedings which had been heard or determined by any Court”

My understanding of the above provision is that apart from the Tribunal being barred from entertaining claims that are out of time, they were also bound by the principle of res-judicata. It is of course appreciated that such Tribunals were not composed of persons legally trained but the law that governed their operations was clear on their mandate. It is clear from the record herein that the Tribunal case was filed by respondent on 24th July 2006 and in his testimony, the respondent said:-

“Now my wish is to have the defendant evicted from my land for he have (sic) been there for over 20 years and he should pay the rent for all that time he have (sic) been using my land out off (sic) giving me only Ksh. 2,500”

By respondent's own admission therefore, the appellant had been on the land subject of this appeal for twenty years by the time the dispute was being filed and determined. That claim was filed out of time and by dint of the provisions of **Section 7 of the Limitation of Actions Act**, the Tribunal was barred from entertaining it. That ground of appeal similarly succeeds.

Ultimately therefore, this Court find merit in the appeal which it allows and makes the following orders as sought by the appellant:-

- 1. That the Mwea Land Disputes Tribunal had no jurisdiction to adjudicate on a dispute involving ownership or title to land.***
- 2. That the award of the Mwea Land Disputes Tribunal was void, illegal and of no effect in so far as it purported to award the title to the parcel of land comprised in Title No. MWERUA/KABIRIRI/1109 to the respondent and direct the Court to revoke the appellant's title to the said parcel of land.***
- 3. That the institution of Arbitration Case No. D/26D/VOL V/76 – MWERUA/KABIRIRI/1109 before the Mwea Land Disputes Tribunal was barred under the Limitation of Actions Act and the Tribunal had no jurisdiction to entertain it.***
- 4. That this Honourable Court allows this appeal by setting aside the award of the Mwea Land Disputes Tribunal and its adoptive judgment given on 25th January 2007 by the Resident Magistrate's Court at Wanguru in Arbitration Case No. 26 of 2006.***
- 5. That this Honourable Court orders the rectification of the register of parcel MWERUA/KABIRIRI/1109 by directing that the registration of GENESIO KABUNYA NJAGI (the respondent herein) as proprietor thereof pursuant to the award of the Mwea Land Disputes***

Tribunal be cancelled and the registration of MUTHIKE MWANIKI (the appellant) as proprietor thereof be restored.

6. *In the circumstances of this case, this Court finds that the interest of justice will best be met by an order directing that each party meets their own costs both here and in the Court/Tribunal below.*

It is so ordered.

B.N. OLAO

JUDGE

12TH MAY, 2016

Judgment dated, delivered and signed in open Court this 12th day of May 2016

Ms Kiragu for Mr. Makori for the Respondent present

Respondent also present in person

Mr. Githuka for the Appellant absent but Appellant present in person.

B.N. OLAO

JUDGE

12TH MAY, 2016