



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL APPEAL NO. 296 OF 2010**

**COMMITTEE MEMBERS (EQUATOR PLOTS).....APPELLANT**

**VERSUS**

**STEPHEN KANGOGO KAIYONI.....RESPONDENT**

(Being an appeal against the decision of the Provincial Land Disputes Appeals Committee Nakuru-RVP dated 30<sup>th</sup> day of September, 2010)

**JUDGMENT**

1. The Committee Members (Equator Plots) hereinafter referred to as “the Appellant” have appealed to this court against the award made by the Provincial Land Disputes Appeals Committee, Rift Valley Province sitting on Appeal Case No.8 of 2005 which award was adopted by the Chief Magistrate’s Court at Nakuru as a judgment of the court. In their Memorandum of Appeal, the Appellant have set out four grounds to wit:-
  - i. **That the Appeals Committee erred in law in making adverse orders against individuals who were not party to the proceedings.**
  - ii. **That the Appeals Committee erred in law in acting contrary to the rules of natural justice.**
  - iii. **That the Appeals Committee erred in law in dealing with a matter in which it had no jurisdiction taking into account that individuals against whom adverse orders were made have Title Deeds to the suit property.**
  - iv. **That the Appeals Committee erred in law in failing to find that the tribunal lacked jurisdiction in the matter.**
2. The appeal raises pure points of law. Both parties agreed to dispose of the appeal by way of written submissions which they filed and exchanged.
3. Brief facts of this case show that the Respondent filed a claim before the Koibatek Land Disputes Tribunal claiming the right to possess Plot number 790 having purchased the same from one John Langat (deceased).The tribunal heard the matter and decided in favour of the Respondent. The Appellant being dissatisfied with the award by the Koibatek Land Disputes Tribunal preferred an appeal as required before the Provincial Appeal Tribunal, Rift Valley wherein an award dated 30<sup>th</sup> September, 2010 was made upholding the Koibatek Land Disputes Tribunal’s decision to the effect:-
  - i. **That the disputed trade centre plot be refunded to the Respondent without loss of**

## measurements

- ii. **That the persons occupying the plot, William Kibet Sangol ID number 0483803 and Edwin K. Tum, ID number 4015153 be evicted with immediate effect and that any structure they have erected demolished in order to give vacant possession to the Respondent.**
  - iii. **That the decision of the Koibatek District Land Dispute Tribunal is upheld.**
4. During the hearing of this appeal, the Appellant was represented by **Mr. Ngure**, learned counsel whereas the Respondent was represented by **Ms. Wanjiru**, learned counsel.
  5. In support of the Appeal, Mr. Ngure combined grounds (i) and (ii) and submitted that one William Kibet Sangol and Mr. Edwin K. Tum who were ordered to be evicted from the suit property were not parties to the proceedings and should not have been condemned unheard. He relied on the decision in **Abbot vs Sullivan (1952) 1KB189** where Lord Denning observed that bodies which exercise monopoly in important spheres of human activity with power of depriving a man of his livelihood must act in accordance with elementary rules of justice. They must not condemn a man without giving an opportunity to be heard in his own defence and any agreement or practice to the contrary would be invalid. Counsel further submitted that the Land Disputes Tribunal did not have jurisdiction to arbitrate over matters of ownership of registered land. He contended that the two individuals against whom adverse orders were made have title Deeds to their parcels of land registered in the name of **Joseph Kipkemoi Tanui and Milka J. Tallam**. He referred the court to the decision in **Joseph Wambugu Kimenju V. Attorney General**, (2013) eKLR.
  6. In reply the Respondent submitted the Appellant had not demonstrated the authority to represent **Joseph Kipkemoi Tanui and Milka J. Tallam** and therefore lacks locus standi to agitate any issue touching on third parties. According to counsel, the two individuals who are alleged to be proprietors had not challenged both decisions of the tribunal nor was there evidence in the proceedings of the tribunal that the decisions touch on or affect **Joseph Kipkemoi Tanui and Milka J. Tallam**. Further the Respondent submitted that the proceedings before the tribunal touched on plot no 790. However the appellant's submissions was in respect of parcels number Baringo/Mumberes/2303 and 2204 which are distinct and there was no nexus between the parcels of land and the suit property (plot 790).
  7. Further the appellant submitted that **Section 3** of the **Land Dispute's Tribunal Act** gives the tribunals power to hear disputes in a claim to occupy land and in so doing the tribunal was right in finding that the Respondent had the right to possess the suit property. He reiterated that there was no evidence tendered to demonstrate that the suit property had been registered nor did the Appellant establish a nexus between the suit property and Baringo/Mumberes/2303 and 2204.
  8. Finally, the Respondent submitted that under the Land Dispute's Tribunal Act the period for an aggrieved party to appeal was 30 days. However the Appellant appeal to the Appeals Tribunal was in the year 2005 while the decision of the Koibatek District Land Dispute Tribunal was delivered on 3<sup>rd</sup> October, 2003. There was a breach of the statutory provisions and therefore no competent appeal was lodged to the appeal tribunal and consequently before this court. He relied on the decision in **John Mungai Tama V. Angelica Muthoni Tama**, (2005) eklr.

## ISSUES FOR DETERMINATION

9. After reading the written submissions of the respective parties this court has only framed one issue for determination;

- i. **Whether the Appeals Committee and the Land Dispute Tribunal had jurisdiction;**

## ANALYSIS

10. This being the first appellate court it behoves this court to reconsider the evidence on record, re-evaluate it and to arrive at its own independent finding and conclusion.

11. The most crucial issue is on a pure point of law and relates to whether the two bodies acted within their mandated powers particularly the tribunal, whether this body had jurisdiction. Jurisdiction is

everything and without it any steps undertaken by a body is a nullity and cannot be left to stand.

12. **Section 3(1) of the Land Disputes Tribunal Act** (now repealed) outlines that the jurisdiction of these Tribunals is limited to determining all civil cases involving disputes related to;

**“3(1) All cases of civil nature involving a dispute as to:**

**a) Division of or determination of boundaries to and 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 under Section 4.”**

13. The Court of appeal in **Joseph Karobia Gicheru vs Micheal Gachoki Gicheru [2013]eKLR** held that the jurisdiction granted by statute to tribunals should be strictly construed.

14. It is trite law that a Lands Dispute Tribunal has no jurisdiction to determine issues related to ownership. The dispute before the Koibatek Lands Dispute Tribunal was that the Respondent vide a Sale Agreement made on the 30.12.1993 purchased the suit property known as Plot 790 from one John Kimtai Lagat (deceased) for a sum of Kshs.30,000/=.

15. There was also evidence tendered before the Tribunal that the same plot was also sold by William Kibett Songol to Symon Koima and this transaction had the blessings of the Committee Members (Equator Plots).

16. The Tribunal made a decision that the Respondent had **“a right to possess Plot No.790, along the highway, as he bought it from late John Lagat, who also had a right to possess it”**.

17. From the reading of the award it is apparent that the Tribunal strategically employed the use of the word **“possess”** and avoided the use of the word **“own”** as its members knew that this would place the matter outside its mandate.

18. After reading the whole decision I have further noted that there is no analysis as to how the Tribunal arrived at its decision as to how the Late John Lagat acquired the suit property and derived his right to possess/own and thus the right to transfer the property to the Respondent.

19. In the decision the Tribunal went further to order that vacant possession be given to the Respondent and that William Songol and Edwin Sum be evicted and any structures the two had put on the suit property be demolished.

20. It is this court's considered view that from the evidence adduced, these are claims for the ownership of the suit property arising from sale agreements. This court is satisfied that the ruling of the Tribunal was clearly outside its mandate as provided under Section 3(1) of the repealed Act. The decision or award made by the Tribunal is found to be a nullity.

21. The Rift Valley Appeals Committee on the 30<sup>th</sup> September, 2010 upheld the decision of the Koibatek Lands Disputes Tribunal. The decision or award made by the Tribunal being found to be a nullity, this therefore means that there was no competent appeal before the Appeals Committee.

## **FINDINGS**

22. For the reasons stated above this court finds that the Land Disputes Tribunal acted outside its mandate in determining issues pertaining to ownership and rights of parties under an agreement for sale of land.

23. The decision or award made by the Tribunal is found to be null and void and it is further found there was no competent appeal before the Appeals Committee.

## **DETERMINATION**

24. The appeal is found to be meritorious and is hereby allowed.

25. The parties are at liberty to pursue their claims in a court with competent jurisdiction.

26. Each party shall bear its/ their costs.

**Dated, Signed and Delivered this 17th day of July, 2015.**

**A. MSHILA**

**JUDGE**