



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
CIVIL APPEAL NO. 169 OF 2009

PAUL RONO SANGAPPELLANT

VERSUS

WILLIAM RONO LANGAT.....RESPONDENT

(Being an Appeal from the orders/decision/determination delivered by the Rift Valley Appeals Committee on Land Disputes Appeal Case No. 30 of 2007 delivered on 15th September, 2009)

JUDGMENT

This appeal is as a result of the decision by the Provincial Land Disputes Appeals Committee, Rift Valley delivered on 15th September, 2009. The appeal before the Provincial Land Disputes Appeals Committee was lodged by William Rono Langat the Respondent herein against the decision by the Tindiret District Land Disputes Tribunal.

The Rift Valley Provincial Land Disputes Appeals Committee gave the following verdict:-

"The appeal is allowed and the decision of the Tindiret Land Dispute Tribunal adopted by Senior Resident Magistrate's Court, Kapsabet on the 10th day of April, 2007 set aside. The Respondent Paul Rono Sang - ID. No. 5187064 - should surrender immediately the Title Deed No. SONGOK/KAPTIE BLOCK 1/453 - SENETWO to the Land Registrar, Kapsabet and in turn to be issued to William Kiprono Langat - ID. No. 17985530."

The above verdict was arrived at on 15th day of September, 2009. The Appellant was dissatisfied with the said verdict and he filed this appeal. He has raised the following Grounds of Appeal:-

- 1. That the Provincial Appeals Committee did not have the jurisdiction or the power to order alteration of the Register and ownership of land whose title was obtained on first registration.***
- 2. That the Provincial Appeals Committee erred in law in directing that the Appellant's name should be deleted from the register of parcel SONGHOR/KABUTEI/BLOCK 1/453 SENETWO which the Appellant is the 1st Registered owner under the Registered Land Act Cap 300.***

3. *That the finding and decision of the Provincial Appeals Committee contravene the provisions of Section 27 and 28 of the Registered Land Act Cap 300 Laws of Kenya.*

4. *That the Provincial Appeals Committee in making their decision/determination took into consideration irrelevant and extraneous matter like referring to the Appellant's "lack of cooperation and carelessness" and calling the Appellant "Adamant".*

5. *That the decision/determination of the Rift Valley Provincial Appeals Committee was not based on merit but the same showed open bias against the Appellant.*

6. *That the decision/determination of the Provincial Appeals Committee is contrary to the Registered Land Act and the whole decision is based on the wrong understanding of the law.*

The appeal was canvassed by way of filing written submissions. According to the Appellant the complaint by the Respondent before Tindiret Land Disputes Tribunal was dismissed and each party was ordered to remain in their respective parcels - namely number 453 for the Appellant and number 452 for the Respondent. According to the Appellant, Land Parcel No. **Songhor/Kabutei Block 1 (Senetwo) 453** is registered in his name but the Respondent was laying a claim on it. He said that the Provincial Appeals Committee reversed the decision of the District Land Disputes Tribunal and ordered that the whole parcel of land No. 453 be given to the Respondent, in effect, cancelled the title already held by the Appellant.

In this regard, the Appellant has submitted that the Provincial Land Disputes Appeals Committee (hereafter the Appeals Committee) acted beyond its jurisdiction and powers conferred to it by Section 3 of the Land Disputes Tribunal Act No. 18 of 1990 - now repealed and hereafter referred to as the Act. Counsel for the Appellant relied on the case of **ELDORET HIGH COURT MISCELLANEOUS APPLICATION NO. 134 OF 2013 - REPUBLIC -VS- NANDI DISTRICT DISPUTES TRIBUNAL (KIPKAREN) & ANOTHER**, which I will revisit hereafter.

The Respondent on the other hand submits that he is entitled to the land because he has been in its occupation since 1990. He submitted that parcel No. 454 is not in land parcel No. 453 as claimed by the Appellant and that parcel numbers 453 and 452 were given to him to replace the one he lost in Lower Senetwo.

I have accordingly considered the grounds of appeal and the submissions by the respective parties and I take the following view of this appeal.

Any party aggrieved by the decision of the Tribunal established under Section 4 of the Act had a right of appeal to the Provincial Appeals Committee as provided by Section 8 (1) of the Act which reads:-

"8 (1) Any party to a dispute under Section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated."

This provision did not restrict the aggrieved party to the issues it could appeal against provided they were issues that were deliberated upon by the District Tribunal. Therefore, the appealing party could appeal against the whole of the decision of the District Land Disputes Tribunal. This means that the Appeals Committee restricted itself to issues for which jurisdiction is conferred to the District Tribunal as per Section 3 of the Act. And if it deliberated on issues outside the confine of the said Section 3 of the Act, it follows it shall be acting outside its jurisdiction.

Having said the above, it is important to address to issues which the High Court should address itself to as provided by the Act.

Under Section 8 (9) of the Act, a party aggrieved by the decision of the Appeals Committee can further appeal in the High Court only on a point of law. The provision reads:-

"(9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of:

Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved."

From the foregoing I find that the issue for determination is whether both the Tindiret Land Disputes Tribunal and the Appeals Committee had jurisdiction to entertain the complaint and the appeal respectively.

The Tribunal is granted the power to entertain a complaint by Section 3 (1) of the Act 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.

The wording of the decision of the Appeals Committee clearly shows that the disputed land is registered under the now repealed Registered Land Act, Cap 300, Laws of Kenya. It is apparent that it ordered the title to the land which was being held by the Appellant be surrendered to the Registrar of Land, Kapsabet Land Registry and the latter was to issue a new title in the name of the Respondent. This ultimately means that the Appeals Committee deliberated on an issue relating to title and ownership to land. That is to say, even the Respondent himself had, before the District Land Disputes Tribunal, asked the Tribunal to determine on who should hold the title to the land. Whereas the latter Tribunal ruled that each party remains on the portions they held the title to, ab initio, the complaint filed before it was way beyond its jurisdiction as it could not determine on the ownership of the title. The Appeals Committee did not make things better. It ordered that the title held by the Appellant be canceled and a new one issued in the name of the Respondent, again acting ultra vires its mandate as conferred to it by Section 3 of the Act. It is trite that Section 3 of this Act did not contemplate a situation in which any of the Tribunals would deliberate on issues touching on possession/ownership of title to land. Its powers are limited to division, occupation and trespass to land and no more.

The case law in this field is rich. That cited by the Appellant's counsel, **REPUBLIC -VS- NANDI DISTRICT DISPUTES TRIBUNAL (KIPKARREN) & ANOTHER (Supra)**, is relevant in that Gacheche, J ruled that the Tribunal lacked jurisdiction to determine a claim on a share of a property.

In the case of **M'MARETE -VS- REPUBLIC & 3 OTHERS [2004] e KLR (CIVIL APPEAL NO. 259 OF 2000, COURT OF APPEAL SITTING AT NYERI**. The Court of Appeal reiterated as follows:-

"In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupancy or work the land, but a claim to ownership. Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went

beyond its jurisdiction when it purported to award parcels of land registered under Land Act to the Appellant. In our view, the Tribunal acted in excess of its jurisdiction."

Having noted that the dispute herein relates to possession of land and since the Respondent is claiming occupational interests and rights to the suit land, it is very clear that the propriety of possession and or occupation ought to have been deliberated upon by a competent court as envisaged by Section 159 of the Registered Land Act (albeit now repealed). I have also noted that the registration herein is the first registration which was subject for consideration by a competent court in line with the provisions of Section 27 and 28 of the Registered Land Act. In this regard, the Tribunal is ousted jurisdiction by Section 159 of the said Act which stipulates as follows:-

"159. Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in disputes does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute comes within the provisions of Section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act."

This proposition of the Law was affirmed by the Court of Appeal in the case of **JOTHAM AMUNAVI -VS- THE CHAIRMAN SABATIA DIVISION LAND DISPUTE TRIBUNAL & ANOTHER, CIVIL APPEAL NO. 256 OF 2002, COURT OF APPEAL SITTING AT KISUMU, (Unreported)** when the learned Judges of Appeal observed that:-

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

Having considered this appeal in its entirety, it is common ground that the two Tribunals lacked jurisdiction to deliberate on the issues placed before them, that is to say, a dispute relating to title to land and its ownership. I therefore entirely agree with the Appellant, reasons wherefore this appeal must succeed.

In the result, I hereby set aside the decision of Tindiret Land Disputes Tribunal adopted by the Senior Resident Magistrate, Kapsabet on 10th day of April, 2007 as well as that of the Rift Valley Provincial Appeals Committee delivered on 15th September, 2009. The effect in this order is that the title to the disputed land shall remain in the name of the Appellant. The Respondent shall pay costs of this appeal.

It is so ordered.

DATED and DELIVERED at ELDORET this 12th day of March, 2014.

G. W. NGENYE - MACHARIA

JUDGE

In the presence of:

Mr. Nyolei Advocate for the Appellant

Mr. Wasike Advocate for the Respondent