



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MOMBASA

CIVIL APPEAL 131 OF 2009

MUSILI KALEVE.....APPELLANT

VERSUS

JUMA SWALEHE NYUNI.....RESPONDENT

Coram:

Mwera, J.

Appellant in person

Genga for Respondent

Court Clerk Furaha

JUDGMENT

The record of appeal was lodged here on 16th May, 2010. There were five grounds of appeal following the Coast Appeals Committee award made on 21st May, 2009 in the Land Case No. 52/2008. It was therein stated that the Appeals Committee, the committee erred in upholding the award of the elders without giving reasons; the committee was improperly constituted. It fell in error when it proceeded to hear the subject dispute afresh instead of going by the grounds of appeal; and that it was wrong for the committee to hear a matter that emanated from land registered under Cap 300. The appellant lodged this appeal in person and so acted in the matter by filing a script of submission. The respondent was represented by Mr. Genga.

The appellant submitted that he got the suit property KWALE/GUNDUNI/304 during adjudication and was registered over it on 29th September, 1998 when he obtained title. The respondent filed Lunga Lunga Land Tribunal Case No. 3/2008. An award made in his favour, ordered revocation of the appellant's title. That prompted the appellant to file Appeal Case No. 5/2008 now under review, after whose hearing the Appeals Committee upheld the tribunal decision directing that the district land registrar do cancel the appellant's title and issue a new one to the respondent – hence the present appeal.

Arguing the 1st to the 4th grounds together the appellant urged the court to find that the committee upheld the tribunal award without assigning reasons contrary to section 8 (7) of the Land Disputes Tribunal Act, the Act. That it heard the dispute afresh contrary to section 8 of the said Act.

As regards ground 5 the court was told that the subject land having been registered in the name of the appellant since 29th September, 1998 it was in error, first the tribunal and later the committee to entertain

any dispute over that land under the Act and even ordering cancellation of its title. The appellant set out the three areas the tribunal was mandated to confine itself to when hearing land disputes, ending with an assertion that the tribunal herein did not have jurisdiction under the Act to hear a dispute over registered land. Thus the tribunal fell in error of jurisdiction and the committee could not have upheld the tribunal award. Only the High Court could revoke a title to registered land and thus this appeal should succeed.

On the part of the respondent it was argued that the subordinate court had jurisdiction to adopt a land disputes tribunal's award, as a judgment, issue a decree and have the same executed. All that took place in the present case and so for this appeal to succeed, the appellant had to prove how the rulings of the tribunal and the committee were prejudicial to him.

That the appellant had not demonstrated how the committee was irregularly constituted and that the appellant seemed to be arguing the merits of the dispute before this court.

While going over the tribunal and the committee proceedings in order to place the necessary aspects of the law and fact in the context of this appeal, it can be said that the appellant's case is that he bought plot No. 304 from one Kassim Silaha Kanuni. The time/year is not quite clear but it was said to have been during the time of adjudication. Prior to buying this plot and the same being given to him by Kassim, seemingly one Kariuki had made moves to buy the land but the deal fell through and the appellant took it. There were no sale documents exhibited. The tribunal found that Kassim did not have the power/authority to sell/give plot No. 304 to the appellant. The tribunal came to that conclusion on the basis that Kassim was not a relative of the respondent's family and so he could not sell off their land. So in tribunal's opinion the land had to be given back to the respondent (family). In doing so the tribunal noted:

“The title deed was therefore obtained irregularly and should now be revoked (revoked?) accordingly.”

It was the tribunal's view that the appellant did not buy plot No. 304. However, what this court gleans from the proceedings and award of the tribunal is that plot No. 304 was registered in the name of the appellant, which title the tribunal ordered that it had to be revoked.

Before the committee, it did not record the grounds of appeal before it or the submissions of the parties. But it opened its decision thus:

“Having heard and considered the representations of all the parties and having considered all the documents submitted to us we hereby decide as follows:”

The committee found/decided:

“The dispute (is) over a land (sic) with a title plot No. Kwale/Ngunduni/304.”

And:

“The disputed land is registered under the names of Musili Kileve.”

Then in its finding, the committee restated that the appellant had obtained title to the suit land. The district land registrar was directed to recall that title, cancel it and issue a new one to the respondent herein.

At this point this court is minded to observe that the committee proceedings were so scanty, lacking in relevant/basic detail and least helpful. For instance it is not clear what documents it considered, with none seemingly having been produced before the tribunal. But overall the court is left with the impression that the appellant held a title to plot No. 304. It is not clear from what date but definitely pre-dating the proceedings before both the tribunal and the committee.

This court was/is only mandated to hear an appeal from the committee on issues of law duly certified by it. Here the appellant came here on points of law including lack of jurisdiction for both the tribunal and the committee to entertain ownership disputes under the Act relating to land with title.

The limitation of the tribunal under the Act is as follows:

“3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to –

- ***the division of, or the determination of boundaries to land, including land held in common;***
- ***a claim to occupy or work land; or***
- ***trespass to land, shall be heard and determined by a Tribunal established under this Act.”***

That was the law before the Act was repealed so we will still apply only in the context before the repeal. Section 3 limited the tribunal to three areas of dispute. Those did not include determining disputes relating to ownership of registered title to land or ordering its revocation/cancellation. The registered Land Act (Cap 300) deals with that. Accordingly the tribunal then subsequently the committee, fell foul of the law when dealing with the ownership of the registered land in the name of the appellant.

Several authorities abound stating the state of the law as just alluded to.

In sum this appeal is allowed with costs.

Delivered on 5th September, 2012.

J. W. MWERA
JUDGE