



REPUBLIC OF KENYA

IN THE ENVIRONMENT LAND AND COURT OF KENYA

AT ELDORET

E&L CASE APPEAL NO. 15 OF 2019

PETER KURIA MURAYA.....APPELLANT

VERSUS

JOHN KIPKEMBOI KOECH.....RESPONDENT

JUDGMENT

The appellant being aggrieved by the decision of the Land Dispute Appeals Committee Case No. 66 of 2002 delivered on 17th July 2000 appeals against the whole decision on the following grounds: -

- a) The Appeals Committee erred in law in failing to find that the Soy Division Land Disputes Tribunal had no jurisdiction to entertain Land Disputes Tribunal Case Number 15 of 2000 in view of the following points: -
 - a. The claim touches on Registered Land Act Cap 300 and the sum total of the award was an order for alienation and/or subdivision of the land title number SERGOIT/KAIWOP TAOI BLOCK 3(SHAMTREK)57, and such an order can only be granted by a court of law.
 - b. The claim was incompetently instituted as no statement of claim was filed and served as required by Section 3 of the land dispute tribunal act 18 of 1990.
- b) The Land Disputes Appeals Committee erred in law in failing to find that all the proceedings before the Soy Division Land Disputes Tribunal are a nullity on account of gross non-compliance and/or departure from the procedure set out in the land dispute tribunal act no 18 of 1990.
- c) The Land Disputes Appeals committee should have found that the proceedings before the Soy Division Land Disputes Tribunal were fundamentally flawed hence the same, including the award should have been struck out and/or dismissed for noncompliance with the Land Disputes Tribunal Act No 18 of 1990.
- d) The Land Dispute Appeals Committee erred in law in failing to find that the award given by the Soy Division Land Disputes Tribunal was a nullity for failing to comply with the provisions of section 2(8) of the Land Disputes Tribunal Act 18 of 1990.

The appellant therefore prayed that the appeal be allowed and the decision of the Land Disputes Appeal Committee be set aside and be substituted with an order striking out and/or dismissing the claim in Soy Division Land Disputes Case No. 15 of 2000 and the subsequent adoption of the award by the Chief Magistrates Courts in Award Number 36 of 2001.

Counsel agreed to canvas the appeal vide written submissions which were duly filed

APPELLANT'S SUBMISSIONS

Counsel for the appellant gave a brief background to the appeal and stated that this appeal arose as a result of the Soy Division Land Disputes Tribunal award to the Respondent which was an order for alienation and or subdivision of the land title No. **SERGOIT/KOIWOP TAOI BLOCK 3(SHAMTREK) 57** and the Land Dispute Appeals Committee decision to uphold Soy Division Land Disputes Tribunal award.

Counsel submitted on the duty of an appellate court and relied on the case of **Suluenta Kennedy Sita & another v Jeremiah Ruto (suing as legal representative of the Estate of Joyce Jepkemboi) [2017] eKLR** stated as follows;

“A first appellate court is enjoined to re-evaluate all the evidence adduced before the lower court in order to reach its own independent conclusions but in doing so, it should give due allowance to the fact that it did not have the opportunity of seeing or hearing the witnesses.”

Counsel further submitted that it is significant to note that though the appellate court is mandated to review and reverse or otherwise the findings or verdict of the lower court, it must exercise its jurisdiction with caution. That in exercising that mandate it should bear in mind that it did not have an opportunity to see or hear the witness testify.

It was counsel’s submission that as a general rule, an appellate court should not interfere with the findings or decision of a lower court unless it is demonstrated that in reaching its decision, the lower court made an error of law or took into account irrelevant considerations or that the court based its decision on no evidence or a misrepresentation of the evidence.

Ms Cheso submitted that jurisdiction is everything and once the court has no jurisdiction it has no power to make one more step. That the appellant is challenging the jurisdiction of the Land Disputes Tribunal with regard to the dispute between him and the Respondent which dispute involved title which does not fall within a dispute as envisaged in Section 3(1) of the Land Disputes Tribunal Act (Chapter 18) of 1990.

Counsel also relied on The Registered Land Act (Cap 300) (repealed) which stipulates that the title issued in respect of a parcel of land is prima facie evidence of its ownership and that any proceedings relating to the title be determined by the High Court unless its value is less than specified amount therein or unless the disputes come within the provisions of Section 3(1) of the Land Tribunals Act which provides that:

(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.**

Ms Cheso therefore submitted that the dispute was outside the jurisdiction of the Tribunal and therefore the proceedings before and the award of the Tribunal are thus null and void. That it then follows that the Tribunal acted in excess of its mandate as it lacked the jurisdiction to proceed with the division or distribution of the applicant's land.

Counsel relied on the case of **Republic vs Kajado North District Ngong Land Disputes Tribunal & Another ex-parte Caroline Wambui Ngunjiri & 2 others (2014)eKLR** where Justice Odunga held that;

‘In my view if the said Tribunal had no jurisdiction to entertain the matter, whatever proceedings flowed from its decision would be null and void since a decision made by a tribunal which has no jurisdiction to entertain the dispute before it must of necessity be null and void It is therefore clear that the ISt Respondent had no jurisdiction to deal with the dispute which was placed before it’.

Ms Cheso therefore urged the court to allow the appeal and set aside the decisions of Land Disputes Tribunal and Land Disputes Appeals Committee (Rift Valley Province) together with the subsequent adoption of the award by the Chief Magistrates Court in award Number 36 of 2001.

RESPONDENT’S SUBMISSIONS

Counsel gave a brief background of the evidence that was tendered in the case as can be seen from the record of appeal. Counsel also submitted that the main issue in the appeal is the jurisdiction of the Land Disputes Tribunal to issue an order alienating or sub dividing land parcel NO. SERGOIT/KOIWOP TAOI BLOCK 3 (SHAMTREK)57 and the Land Disputes Appeals Committee to uphold the said decision.

Counsel relied on the provisions of section 3 (1) (a) of the Land Disputes Tribunals (repealed) and submitted that the decision of the tribunal in this case was proper and that they had the jurisdiction to entertain the claim and render the decision as they did. That ordering that the Appellant to cede 0.2 acres of his parcel of land to the Respondent did not amount to acting in excess of the powers conferred upon the tribunal.

Counsel therefore urged the court to dismiss the appeal and uphold the decision of the Tribunal.

ANALYSIS AND DETERMINATION

The issue for determination in this appeal is as to whether the Land Disputes Tribunal had the jurisdiction to handle the case that was before it.. On the issue of jurisdiction, the operative law was the Land Disputes Tribunal Act (now repealed).

Section 3 of the Act stipulates 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.

Jurisdiction of a court or a quasi-judicial body is very important and such a court or body should first ascertain whether it is clothed with the requisite jurisdiction before it deliberates on an issue. If at the preliminary stage a court or a quasi-judicial body finds that it does not have such mandate, then the best action is to declare so and move no further. That is the reason why courts always start with affirming their jurisdiction to handle a matter before moving forward especially where the boundaries are fluid or cuts across other courts or judicial bodies with specific mandates.

From the provisions of the Land Disputes Tribunal, it is evident that the tribunal acted in excess of its mandate by dealing with titled property and gave orders which were ultra vires. The dispute was not in respect of a boundary, a claim of occupancy or to work the land. The claim was purely on ownership which could not be adjudicated upon by the Land Disputes Tribunal. The Tribunal was over ambitious in discharging their duty beyond their mandate. This is evident in the ruling by the Tribunal dated 17th July, 2007 which stated as follows:

“Plot No. 51 Shamtrek belongs to the respondents Mr. John Kipkemoi Koech ID No. 2320156 after having been awarded to him by the chief’s elders on 7th October, 1999 measuring 0.2 acres”.

In the case of **M’Marete v Republic & 3 others, Court of Appeal, Nyeri, Civil Appeal 259 of 2000 [2004] eKLR** the court held-

“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 [the] Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction.”

The dispute between the parties from the above ruling before the Land Disputes Tribunal which was adopted by the court was essentially an ownership claim over the suit land.

In the case of **Masagu Ole Naumo v Principal Magistrate Kajjado Law Courts & Another, Nairobi, High Court, JR 370 of 2013 [2014] eKLR**. Odunga J held as follows-

“In my view the view that the Tribunal had no powers to deal with registered land is incorrect. What the Tribunal was prohibited from undertaking is a determination with respect to title to land”.

I have considered the appeal, the submissions of counsel and find that where a tribunal acts in excess of its powers then the only remedy is to have the whole proceedings emanating therefrom be declared null and void as was stated in the case of **Joseph Karobia Gicheru vs. Michael Gachoki Gicheru [2013]eKLR** where the court held that:

Where a court or a tribunal embarks on the hearing and proceeds to determine a dispute over which it has no jurisdiction, the entire proceedings are empty of legal life and are null and void ab initio. No amount of acquiescence by any party to the conduct of such proceedings and no measure of consent by parties, no matter how express or deliberate could confer upon such court or tribunal such jurisdiction. The proceedings and orders are nullities and of no legal effect from inception and remain so to the end.

I therefore allow the appeal as prayed and set aside the decisions of Land Disputes Tribunal and Land Disputes Appeals Committee (Rift Valley Province) together with the subsequent adoption of the award by the Chief Magistrates Court in award Number 36 of 2001 with costs to the appellant.

DATED and DELIVERED at ELDORET this 5TH DAY OF NOVEMBER, 2020

M. A. ODENY

JUDGE