



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC APPEAL NO. 44'B' OF 2014

JAMLECK MUTHIKE KIRABUI.....APPELLANT

VERSUS

EUNICE WAMBUI NGONDI.....1ST RESPONDENT

JACINTA WANJIKU GIKUNJU.....2ND RESPONDENT

(Being an Appeal from Award of the Central Provincial Land Disputes Appeals Committee pronounced on 21st July 1999 in Appeal No. Kirinyaga 48 of 1998 and the subsequent orders issued on 24/6/2008 by the Wanguru Resident Magistrate in Arbitration Case No. 24 of 1997)

JUDGMENT

The appellant lodged this Appeal against the award of the Central Provincial Land Disputes Appeals Committee issued on 21st July 1999 citing the following grounds:

- 1. That the Provincial Land Disputes Appeals Committee erred in law by exceeding the jurisdiction conferred to it by Section 3 of the Land Disputes Tribunal Act.***
- 2. The Provincial Land Disputes Appeals Committee erred in law by granting a relief not specifically claimed by the respondents.***
- 3. The Provincial Land Disputes Appeals Committee erred in law by failing to consider that the Respondent lacked locus standi to present and prosecute a suit for the benefit of the Estate of a deceased person.***

APPELLANT'S CASE

The appellant stated that the land belonged to him and was given to him by his father Kirabui Mbutati. He stated that the respondents are widows of Ngondi alias Gikunju who was given Mutira/Kangai/130 in Mwea National Irrigation Settlement Scheme.

RESPONDENTS' CASE

The respondents stated that their claim was to occupy the suit land that belonged to their deceased husband Peter Ngundu Kirabui therefore the Provincial Land Disputes Appeals Committee had jurisdiction. They also stated that the Appeal is res-judicata having been determined in ELCA No. 52 of 2001 (Kerugoya).

ISSUES FOR DETERMINATION

The following are the issues for determination in the appeal:

1. RES-JUDICATA

The word Res-judicata is defined in **Section 7 of the Civil Procedure Act** as follows:

“7. No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such sub-sequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court”.

Arising from the definition given above, three conditions have to be satisfied for the doctrine to be applicable:

- (1) That there is a former suit or proceedings in which the same parties in the subsequent suit litigated.*
- (2) That the matter in issue is directly or substantially in issue in the former suit.*
- (3) That a Court of competent jurisdiction had heard it and finally decided the matter in controversy.*

From the judgment of the Court in ELCA No. 52 of 2001 which was annexed, it is apparent that the same was in respect of an application seeking stay of the award pending hearing of an appeal in HCC No. 83 of 1999 (Nyeri). The matter in issue was not in issue in the other case and therefore the same is not res-judicata.

2. JURISDICTION

- Jurisdiction has been said to be everything. That was the decision in the celebrated case of ***OWNERS OF MOTOR VESSEL "LILLIAN S" VS CALTEX OIL KENYA LTD (1989) K.L.R 1*** where the Court held as follows:

"Jurisdiction is everything. Without it, a Court has no power to make one more step. Where a Court has no jurisdiction, there could be no basis for a 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".

Section 3 (1) of the Land Disputes Tribunal Act states 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".***

The Superior Court has pronounced itself severally on this issue. In the case of ***Joseph Malakwen Lelei & Another Vs Rift Valley Land Disputes Appeals Committee & 2 others (2014) e K.L.R***, the Court of Appeal in Eldoret stated as follows in regard to jurisdiction of the Land Disputes Tribunal in respect of land ownership:

"On the issue of jurisdiction, we note that the law on this issue is settled and we do not need to belabour it. Section 3 of the Land Disputes Tribunal Act (repealed) gives jurisdiction to the Land Disputes Tribunal to handle claim

Evidently the above provision does not include jurisdiction to deal with issues of determination of title to or ownership of registered land, or the determination of a trust in favour of a party, which in essence was the basis of the 3rd respondent's claim. Having found that the Tribunal and the Appeals Committee lacked jurisdiction to arbitrate on the matter before them, then all other grounds become moot. We say so because it is trite that where a Court or Tribunal takes upon itself to exercise a jurisdiction which it does not possess, its proceedings and decisions are null and void. It then follows that every other proceedings, decisions or award that results from such a process must be construed as a nullity".

Again in ***Dominica Wamuyu Kihu Vs Johana Ndura Wakaritu (2012) e K.L.R***, the Court of Appeal in Nyeri held as follows:

"On jurisdiction, Section 3 (1) of the Land Disputes Tribunal Act is quite clear as to the matters the Tribunals under the Act were authorized to adjudicate upon This provision clearly puts disputes relating to ownership, title to land beyond the tribunal's jurisdiction. In this case, the dispute is on ownership of title No. Magutu/Gathehu/53. That was a dispute outside the jurisdiction of the tribunal".

From the two cases, it is abundantly clear that the provisions of **Section 3 (1)** does not include jurisdiction to deal with issues of determination of title to or ownership of registered land, which in essence was the basis of the respondents claim. The tribunal dealt with dispute relating to ownership of Mutira/Kangai/130 by cancelling the appellant's title and ordering a new title to be issued to the respondents. This does not fall within the provisions of **Section 3 (1) of the Land Disputes Tribunal Act** and therefore they acted ultra vires. It therefore follows that if the Tribunal had no jurisdiction to entertain the matter, whatever proceedings flowed from its decision would be null and void since a decision made without jurisdiction must of necessity be null and void. It is my view that where a Court takes it upon itself to exercise a jurisdiction which the law does not donate, any decision emanating from such a decision amounts to nothing.

In the upshot, I find this appeal merited and the same is allowed. Consequently, the award of the Central Provincial Land Disputes Appeals Committee made on 21st July 1999 and the subsequent orders issued by the Wanguru Resident Magistrate on 24th June 2008 in Arbitration Case No. 24 of 1997 are hereby set aside. The appellant shall have the costs of the appeal.

READ and SIGNED in the open Court at Kerugoya this 25th day of January, 2019.

E.C. CHERONO

ELC JUDGE

25TH JANUARY, 2019

In the presence of:

Mr. Kahiga holding brief for Mr. Kariithi for Appellant

Mr. Asimwe holding brief for Mr. Magee for Respondents

Mbogo Court clerk – present