



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

CIVIL APPEAL NO. 2 OF 2017

ONESMUS DANIEL MASUMBUKO & OTHERS.....APPELLANTS

VERSUS

AUGUSTINO BAYA THOTHO..... RESPONDENT

RULING

1. On or about July 1994, the Land Adjudication Committee of Mwijo/Milimani Adjudication Section, Kayafungo Location within Kilifi District rendered its decision in regard to various disputed parcels of land. Subsequently a number of aggrieved parties appealed to the Minister pursuant to Section 29 of the Land Adjudication Act. Upon conclusion of the appeal hearings, the Minister's representative, FAO Ndunga, the Deputy County Commissioner Kaloleni Sub County rendered his decision on the concerned parcels of land on 25th October 2016.

2. Aggrieved by the said decision, the Appellants simply described in the Memorandum of Appeal filed herein dated 6th February 2017 as Onesmus Daniel Masumbuku "and others" filed this Appeal against Augustino Baya Thotho the successful litigant in the Ministers decision in which they seek to have the Ministerial Decision overturned on the grounds:-

- 1. That the Learned Panelist erred in both law and fact by failing to appreciate the history of the matter;**
- 2. That (the) Learned Panelist erred in law by failing to realise that amongst the properties they were dealing with was a registered property, and not within their jurisdiction;**
- 3. That(the) Learned Panelist erred both in law and fact by dealing with an appeal that was brought out of time;**
- 4. That(the) Learned Panelist failed to address the competing interest and resolve the same in favour of the appellants; and**
- 5. That (the) Learned Panelist failed to offer reasons to justify the findings.**

3. In response, the Respondent filed a Notice of Preliminary Objection on 17th March 2017 giving notice as follows:-

"TAKE NOTICE that on the hearing of the application hereof, counsel for the Respondent shall raise a Preliminary Objection on a point of law that the Appellant's application for Appeal dated 6th February 2017 be struck out with costs to be paid forthwith to the Respondent on the basis that the Application for Appeal against the Order dated 25th October 2016 made by the Panel Chairman/Deputy County Commissioner FAO Ndunga is wrongfully instituted as an Appeal instead of a Judicial Review hence contrary to Section 9(1) (2) and (3) of the Fair Administrative(Action) Act of Kenya, 2015."

4. I have considered the matter before me and the Preliminary Objection raised thereto. Section 29 of the Land Adjudication Act Cap 284 Laws of Kenya provides:-

- 1. Any person who is aggrieved by the determination of an objection under Section 26 of this Act, may within sixty days after the date of the determination, appeal against the determination to the Minister by-**
 - a. Delivering to the Minister an appeal in writing specifying the grounds of appeal; and**
 - b. Sending a copy of the appeal to the Director Land Adjudication, and the Minister shall determine the appeal and**

make such order thereon as he thinks just and the order shall be final.

C.

5. In *Samuel Kamau Macharia & Another –vs- Kenya Commercial Bank Ltd & 2 Others(2012)eKLR* the Supreme Court stated thus:-

“A Court’s jurisdiction follows from either the Constitution or legislation or both. Thus a Court of law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by law... The issue as to whether a Court of law has jurisdiction to entertain a matter before it is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

6. From the material placed before me, it is not in dispute that the proceedings before me emanate from the decision of the Ministerial Panel acting pursuant to the Land Adjudication Act. The Land Adjudication Act has an inbuilt dispute resolution mechanism which starts at the lowest level which is the Adjudication Committee up to the highest level which is an appeal to the Minister responsible for the lands docket. That machinery has now been exhausted and as we have seen, Section 29(1) (b) provides that the decision of the Minister is final.

7. At it were, the Act has not provided for a further appeal to this Court from the decision of the Minister. I am accordingly in agreement with the Preliminary Objection raised by the Respondent though not in very precise terms, that this Court has no jurisdiction to sit on appeal against the decision of the Minister made under the Land Adjudication Act. It is clear to me that this Court cannot entertain a dispute of this nature arising from the adjudication process save in the exercise of its supervisory jurisdiction.

8. That being the case and the Minister’s decision being an administrative action, the Appellants could only come to this Court if there was sufficient reason therefor, by way of judicial review. Otherwise in the circumstances before me the Appeal herein is misconceived and without any foundation. The same is struck out with costs to the Respondents.

Dated, signed and delivered at Malindi this 18th day of January, 2019.

J.O. OLOLA

JUDGE