



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO.182 OF 2018**

**MUSHLIM ALI DUBA .....APPELLANT**

**VERSUS**

**GODANA UCHU.....RESPONDENT**

**JUDGMENT**

***(Appeal from decision of Appeals Committee of the Land Disputes Tribunal; issue being one of ownership of a portion of the suit land; Land Disputes Tribunal and Appeals Committee did not have jurisdiction; appeal allowed).***

1. This is an appeal from the decision of the Rift Valley Land Disputes Appeals Committee pursuant to the provisions of Section 8 (9) of the Land Disputes Tribunal Act, Cap 303A (now repealed by the Environment and Land Act, 2011) which allows a party aggrieved by the decision of the Appeals Committee to appeal the High Court on a point of law.

2. To put matters into context, the respondent lodged a dispute before the Rongai Land Disputes Tribunal over the land parcel No. 370 Lenginet Scheme claiming 1 ½ acres of this land. He contended that the said land was owned by one Ali Duba who was his clansman. He stated that the said Ali Duba, was jailed for 14 years for an offence, and while he was in jail, he called the respondent, who was from the same clan as he, and informed him that he had a ballot for land in Lenginet and he asked him to go and find the land and take care of it. The respondent did exactly that. The land was initially 2 ½ acres but the members were given more land and eventually Ali's share became 7 ½ acres. When Ali was released from jail in the year 1985, he came and lived with the respondent on the land and later married the respondent in the year 1987. After a short while differences arose and Ali chased the respondent away from the land. The respondent felt that he was entitled to some land as he is the one who ensured that it was acquired for Ali and kept it safe until Ali was released from prison and he therefore pressed for a portion of it. He called elders who implored Ali to give the respondent 1 ½ acres, apparently as a sign of appreciation for the good deed that the respondent did to ensure that the land was acquired and maintained on behalf of Ali. Following this, Ali gave the respondent 1 ½ acres of the land as a gift. Ali died in the year 1993, and after his death, his wife, the appellant herein, took over the whole land including the 1 ½ acres that Ali had gifted to the respondent and registered it in her name. Before the Tribunal, the respondent claimed entitlement of this 1 ½ acres. The panel observed that the respondent is the one who was shown the land in the year 1972 as Ali was in jail. He took care of it until 1978 when the land increased to 7 ½ acres. He continued to tend it upto 1985 when Ali was released from jail. All this time he was the one signing for it on behalf of Ali and in total he took care of it for 14 years. They found that Ali had signed a document accepting that the respondent be given 1 ½ acres. In their view, the respondent was entitled to the 1 ½ acres of land.

3. Aggrieved, the appellant filed an appeal before the Rift Valley Land Disputes Appeals Committee. The Appeals Committee were of the opinion that the respondent be awarded the 1 ½ acres of land as the same was given to him as compensation, having taken care of the land while the owner was in jail. They directed the Land Registrar to enter the land and curve out 1 ½ acres for the respondent.

4. Still aggrieved, the appellant has now filed this appeal and has raised the following grounds (slightly paraphrased) :-

*(i) That the Appeals Tribunal erred in law in upholding the decision of the Rongai Land Disputes Tribunal when the said decision was not supported by law.*

*(ii) That the Appeals Tribunal erred in law by purportedly seeking fresh evidence and rehearing witnesses.*

*(iii) That the Appeals Tribunal erred in law in failing to find that the Land Disputes Tribunal had no jurisdiction to award a parcel of land to the respondent.*

*(iv) That the Appeals Tribunal erred in law in purporting to distribute the estate of the deceased one Ali Duba despite there being Succession Cause No. 381 of 1994, Nakuru High Court.*

(v) *That the Appeals Tribunal erred in law in failing to find that the nature of the dispute before the Tribunal was a dispute relating to ownership and therefore it had no jurisdiction.*

(vi) *That the Appeals Tribunal erred in law in failing to evaluate the evidence tendered at the Tribunal and therefore arrived at a wholly erroneous decision.*

5. The appellant has asked that the decision of the Appeals Tribunal be set aside and the appellant be awarded the costs of this appeal.

6. I directed that the appeal be canvassed by way of written submissions and both counsel for the appellant and respondent did file their submissions.

7. In his submissions, counsel for the appellant inter alia submitted that what the respondent presented before the Tribunal was a claim of entitlement to 1 ½ acres of land and it was his view that this does not fall within the jurisdiction of the Land Disputes Tribunal. On her part, counsel for the respondent inter alia submitted that the appeal is incompetent as it does not contain the decree and further that the correct avenue to challenge the award would have been through Judicial Review proceedings. She was of the view that this appeal largely raises issues of fact and not of law. She was further of the opinion that the Appeals Committee was not wrong in upholding the decision of the Tribunal and she saw nothing wrong in the manner that the Appeals Committee conducted its proceedings. She contended that the dispute before the Tribunal was not a dispute relating to land but one relating to compensation owing to the respondent. Both counsel relied on various authorities all of which I have analysed and considered while arriving at my decision.

8. I have considered the preliminary points of law raised by Mrs. Mukira for the respondent but I really do not see much merit in the same. The objection that there is no decree annexed is in my view merely a technical issue which counts for nothing towards the determination of this appeal. There is already in the record of appeal the decision of the Tribunal and the decision of the Appeals Committee. I do not see what additional substance a formal decree would add to these primary documents. The failure to annex a decree, to me, is a technicality that is curable by Article 159 (2)(d) of the Constitution. There was also the issue that this appeal raises issues of fact and not of law. I do not agree. The main issue raised in this appeal is the question whether the Tribunal and the Appeals Committee had jurisdiction to deal with the dispute. Jurisdiction is an issue of law and not of fact and it cannot therefore be argued that this appeal does not raise issues of law.

9. As I have just said, the main ground of appeal is on jurisdiction and I need to determine whether the Tribunal and the Appeals Committee decided a dispute over which they did not have jurisdiction. The jurisdiction of the Land Disputes Tribunal is provided in the Land Disputes Tribunal Act (Cap 303) Laws of Kenya (repealed by the Environment and Land Court Act, 2011). Section 3 of the said statute provides 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.(2).*

10. It will be seen from the above that the jurisdiction of the Tribunal was pretty limited. The only matters that it had mandate to decide were those relating to the division of land or determination of boundaries to land; a claim to occupy or work land; or an issue relating to trespass to land. In the case at hand, the respondent lodged a claim of entitlement to 1 ½ acres of the suit land. He claimed this entitlement as compensation for the good service that he had given to the deceased in making sure that his land is intact while he spent time in jail. Moreover, he mentioned that this portion of land was given to him as a gift when the late Ali was still alive and that it was wrong for the appellant to acquire the whole of it.

11. It is clear to me that the respondent was lodging a claim of title to a portion of the suit land either as compensation or as a gift. The claim before the Tribunal was never one over boundaries to land, or a claim to work or occupy land and neither was it a case of trespass. This was a case through which the respondent wished to have title to the suit land and indeed in its decision the Tribunal did award the respondent 1 ½ acres as he had claimed. In fact the Appeals Committee was more explicit in its decision. It directed the Land Registrar to carve out 1 ½ acres of the suit land and issue him with a title deed to this portion. It means that the end result of the award was to give title to the respondent to land measuring 1 ½ acres. It means squarely that the question before the Tribunal was a question whether the respondent ought to get title to a portion of 1 ½ acres. It is therefore inescapable that the dispute before the Tribunal was one over title to land.

12. It follows that the Tribunal and the Appeals Committee dealt with a dispute that was outside their jurisdiction. That being the case, this appeal must succeed on the ground of jurisdiction. That being the position, it is unnecessary for me to dwell into the other matters raised.

13. For the above reasons, this appeal does succeed with costs.

14. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 15<sup>th</sup> day of February 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Appellant – Present .

Respondent – Absent.

Mr. Mutai holding brief for Mr. Andama for the appellant.

Mrs. Mukira present for the respondent.

Court Assistant: Lotkomoi.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**