



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MACHAKOS**

**ELC. APPEAL NO. 207 OF 2011**

**PATRICK KIOKO WAMBUA.....APPELLANT**

**VERSUS**

**MBURU NYANJUI.....RESPONDENT**

**(Being an Appeal from the Judgment of Principal Magistrate's Court at Yatta**

**in Civil Case No. 44 of 2011 delivered on 24<sup>th</sup> November, 2011**

**by Hon. A.W. Mwangi– S.R.M)**

**JUDGMENT**

1. The Appellant in this matter is challenging the decision of the learned Magistrate in Yatta PMCC No. 44 of 2011. According to the Memorandum of Appeal, it is the contention of the Appellant that the learned Magistrate erred by not analyzing the evidence that was placed before her; that the learned Magistrate erred in law when she proceeded to hear a matter which she lacked jurisdiction and that the learned Magistrate relied on documents whose authenticity had been questioned by the Appellant.
2. When the Appeal came up for directions, the parties agreed to dispose it off by way of written submissions. The Appellant's advocate submitted that the issues raised by the Respondent in the Plant that was filed fell under the jurisdiction of the Land Disputes Tribunal Act; that the Land Disputes Tribunal was the proper forum to entertain the dispute and that the trial court lacked the requisite jurisdiction.
3. The Appellant's counsel submitted that the trial court ignored the evidence of the Appellant who had testified that it is the government that had allowed him to settle on the suit land in 1972; that the court ignored to take into account the fact that the Title Deed produced by the Respondent was a forgery and that the court ignored the evidence that was given by the Provincial Administration.
4. On his part, the Respondent's advocate submitted that the learned Magistrate correctly found that the Respondent was the registered proprietor of the suit land; that the Defendant admitted the jurisdiction of the trial court; that the Land Disputes Tribunals were disbanded way back in early 2010 and that all matters were being handled by the ordinary courts.
5. The suit in the lower court was commenced by the Respondent by way of a Plaint dated 26<sup>th</sup> May, 2011. In the said Plaint, the Respondent/Plaintiff averred that he was the registered proprietor of a parcel of land known as Machakos/Ndalani Phase 1/310; that he holds an indefeasible title to the said land and that the Appellant/Defendant has unlawfully trespassed on the land. The Respondent/Plaintiff sought for damages for trespass and for an order of eviction.
6. In his Defence, the Appellant/Defendant admitted the jurisdiction of the court. The Defendant further averred that he had settled on the suit land since 1972 and that the alleged purchase of the suit land by the Respondent in 1983 was unacceptable.
7. During trial, the Respondent (PW2) informed the court that he purchased parcel of land known as Machakos/Ndalani Phase 1/310 (*the suit land*) from one Gitau John; that the land was then transferred to him and that he was issued with a Title Deed. It was the evidence of the Respondent that the said John Gitau had been offered the suit land which was in a Settlement Scheme by way of a letter of offer.
8. The Defendant produced in evidence the original Letter of Offer that was granted to John Gitau, the consent of the Board for the transfer of the suit land to him and the Certificate of Outright purchase which was issued by the Settlement Fund Trustees.
9. On his part, the Appellant (DW1) informed the trial court that he entered the suit land in 1972; that the suit land was not occupied by then and that the government recognized him as a squatter on the said land.

10. It was the evidence of the Appellant that he was not the only squatter on the land and that he had constructed four (4) houses on the land.
11. DW2 stated that he was appointed the village elder of Kavisoni area in 1979; that it is the Appellant who was identified as a squatter occupying the suit land and that the Provincial Commissioner allowed the squatters to live on their respective parcels of land.
12. The Appellant's case before the lower court was that he was entitled to the suit land by virtue of having lived on the land since 1972. On the other hand, the Respondent's claim was that being a registered proprietor of the land, he is the one entitled to the land.
13. The evidence that was produced by the Respondent/Plaintiff shows that the suit land was a Settlement Scheme known as Ndalani Phase 1 Settlement Scheme. In the Letter of Offer dated 9<sup>th</sup> October, 1972, Plot No. 310 was offered to John P.M. Gitau by the Settlement Fund Trustees. The said John Gitau accepted the offer by way of his letter dated 9<sup>th</sup> October, 1972.
14. Before the titles within the scheme could be processed, John Gitau transferred the suit land to the Respondent who proceeded to acquire the consent of the Land Control Board on 22<sup>nd</sup> April, 1982. On 5<sup>th</sup> May, 1983, the Director of Land Adjudication and Settlement issued to the Respondent with a Certificate of Outright purchase of the suit land.
15. It is after the Respondent/Plaintiff obtained the Certificate of Outright Purchase that the Settlement Fund Trustees transferred the suit land to the Respondent on 11<sup>th</sup> March, 2007. The Respondent was then issued with a Title Deed on 27<sup>th</sup> March, 2007.
16. Considering that a Title Deed was issued in favour of the Respondent in the year 2007, the Land Disputes Tribunal did not have jurisdiction to handle the dispute. Indeed, under Section 3(1) of the Land Disputes Tribunal Act, the jurisdiction of the Tribunal was limited to: the division of, or the determination of boundaries to land; a claim to occupy or work land; or trespass to land.
17. The Tribunal did not have jurisdiction to determine the issue of ownership of land, especially where one of the litigant had been registered as the proprietor of the land under the Registered Land Act (*repealed*). Considering that both parties were claiming ownership of the suit land, and in view of the fact that the land had a Title Deed, the matter was properly before the Magistrate's Court. In any event, the Defendant did admit the jurisdiction of the court when he filed his Defence.
18. The Appellant/Respondent did not produce any evidence to show his entitlement to the suit land. Indeed, the Appellant did not deny that the suit land was a Settlement Scheme, owned by the Settlement Fund Trustees.
19. It is on the basis of the evidence that was put before the trial court that the learned Magistrate, and correctly so, found that the Plaintiff had proved that he had purchased the suit land; obtained the requisite consent from the Land Control Board; was issued with a Certificate of Outright purchase; and eventually obtained a Title Deed.
20. Having admitted that he was a squatter on public land, and having not produced any evidence to show that he was allocated the same land by the government or the Settlement Fund Trustees, I find that the Magistrate arrived at the correct conclusion by holding that the Plaintiff/Respondent had proved to the required standards that he is the legitimate registered owner of the suit land.
21. Consequently, and for the reasons I have given above, I find the Appellant's Appeal to be unmeritorious. The Appeal is therefore dismissed with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 8<sup>TH</sup> DAY OF FEBRUARY, 2019.**

**O.A. ANGOTE**

**JUDGE**