



**REPUBLIC OF KENYA**

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

**AT NAKURU**

**ELCA NO. 107 OF 2018**

**JOEL KITANGO BUSIENEL.....1<sup>ST</sup> APPELLANT**

**ELIZABETH CHEPKEMOI KIPTOO.....2<sup>ND</sup> APPELLANT**

**ESTHER CHEBET BUSIENEL.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**RICHARD KIPKEMOI TUEI.....1<sup>ST</sup> RESPONDENT**

**CHEPKWONY MANYEI (DECEASED).....2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

*(Appeal against the decision of the Land Disputes Appeals Committee; appellant having presented a claim before the Land Disputes Tribunal over title to certain land; Tribunal dismissing his suit; Appellant lodging an appeal before the Appeals Committee; Appeals Committee also dismissing his appeal; Appellant filing a further appeal to the High Court; Dispute before the Tribunal having been one over title and the Tribunal and Appeals Committee could not have had the requisite jurisdiction to hear the said dispute; for want of jurisdiction decision of the Tribunal and Appeals Committee set aside; court cannot proceed to determine the issues on appeal as the lower bodies did not have the requisite jurisdiction; orders sought by appellant cannot be granted within the appeal; appeal dismissed)*

1. This is an appeal contesting the decision of the Rift Valley Province Appeals Committee, pursuant to the provisions of Section 8(9) of the Land Disputes Tribunal Act, Cap 303A (repealed by the Environment and Land Court Act, 2011). The Land Disputes Tribunal Act, prescribed that certain categories of land disputes were to be heard by the Land Disputes Tribunal and the disputes that the Tribunal could hear were set out in Section 3 of the statute which provided 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. A person aggrieved by the decision of the Tribunal had a right of appeal to the Appeals Committee constituted for the Province within which the land was situated. This right of appeal was prescribed under Section 8 of the Act which was drawn as follows :-

*8.(1) Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.*

3. Under Section 8(9), a further appeal to the High Court on a point of law was allowed, the relevant provision being drawn as follows :-

*8 (9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of.*

4. As I mentioned at the beginning, this is an appeal pursuant to the provisions of Section 8(9) of the Land Disputes Tribunal Act.

5. The background leading to the appeal, is that on 19 June 2006, Joel Kitango Busienei (Joel), the 1<sup>st</sup> appellant, on behalf of his daughters, Elizabeth Chepkemoi Kiptoo (Elizabeth) and Esther Chebet Busienei (Esther), named herein as the 2<sup>nd</sup> and 3<sup>rd</sup> appellants, lodged a dispute over the land parcels Nakuru/Tinet/Sotiki/Settlement Scheme/144 and 145 (hereinafter simply referred to as land parcels No. 44 and 45 respectively). At the Tribunal, Joel stated that he was standing in for his two daughters, despite both of them being adults. He claimed that Elizabeth was allocated the land parcel No. 144 and Esther the land parcel No. 145, in the year 1997. He alleged that he allocated the objector before the Tribunal, who is the respondent in this appeal, Richard Tuei and his wife, the land parcels No. 1728 and 1756, but that the respondent has refused to move to the said land parcel No. 1756. In his response, the respondent stated that Joel was the clan chairman, and that he (Joel) allocated to him the land parcels No. 145 and allocated the land parcel No. 144 to the father of the respondent, one Marerit Manyei Chepkwony (deceased). The respondent then moved into the two parcels of land and cleared them and built a house on his allocated parcel of land.

6. After hearing the case, the Tribunal came up with the following findings :-

*(i) That the claimant was a clan chairman for Kapkitango.*

*(ii) That the clan committee had mandate to allocate (land).*

*(iii) That the claimant admitted that he allocated the two disputed parcels No. 144 and 145 to the objector and his late father.*

*(iv) That the objector has made all the developments in both parcels.*

*(v) That the claimant didn't bring the two beneficiaries Elizabeth and Esther to stand in (sic) before the Tribunal to testify they acquired the disputed parcels No. 144 and 145 or are they aware about the plots (sic).*

*(vi) That the beneficiaries for the claimant Elizabeth and Esther have never visited the parcels and they are strangers in the area.*

*(vii) The site visit made by the Tribunal panel established that the objector had developed the farms and lived in there.*

*(viii) That there is no reason why the claimant lodges a dispute on the two plots.*

*(ix) That the objector shall go and collect the disputed land title deeds which were registered as a disputed plot since the plots were allocated legally by the claimant to objector and his deceased father No. 144 and 145 (sic).*

*(x) That the parcels No. Nakuru/Tinet/Sotiki Settlement Scheme 144 belong to deceased Chepkwony Manyei and parcel No. Nakuru/Tinet/Sotiki Settlement Scheme 145 belongs to Richard Kipkemoi Tuei.*

*(xi) The D.O Keringet put a dispute to the parcel by his letter No.15/17 Vol II 23 of 4/7/2005.*

7. The Tribunal, when it visited the site, was also of the view that there is no proof that the claimant can claim ownership for his daughters. In its decision, it decided that the Land Registrar should issue the title deeds to the parcels No. 144 and 145 to Chepkwony Marerit Manyei (deceased) and Richard Kipkemoi Tuei, respectively.

8. In essence, the appellant lost his claim before the Tribunal. Aggrieved, the appellant filed an appeal at the Rift Valley Province Appeals Committee. While determining the dispute, the Appeals Committee found that certain landless local people were to be allocated land at the Nakuru/Tinet/Sotiki Settlement Scheme. The appellant was charged with the responsibility of screening land applicants in liaison with the settlement officer. He thus wished that his two daughters, Elizabeth and Esther, be allocated the land parcels No. 144 and 145, but these two persons never showed up. The Appeals Committee was of the opinion that land allocations were to be for the "local people" and not "unseen ghosts". The Appeals Committee further found that the settlement department in consultation with the local elders recommended Chepkwony Marerit Manyei for allotment of the plot No. 144 and Richard Tuei allotment of the plot No. 145. The Appeals Committee did not find any fault with the decision of the Tribunal and upheld the same. It proceeded to dismiss the appeal with costs.

9. Not being satisfied, a further appeal was filed and in their Memorandum of Appeal, the appellants have raised the following grounds :-

*(i) That the appeals committee erred in law in proceeding with the appeal where one of the parties, i.e Chepkwony M. Manyei, was deceased.*

*(ii) That the appeals committee erred in law in holding that the said Chepkwony M. Manyei was entitled to land when he was already dead at the time the land allocations were done, the deceased having passed away earlier than 1997.*

*(iii) That the Appeals Committee erred in allocating Nakuru/Tinet/Sotiki/145 to the 1<sup>st</sup> respondent Richard Tuei, when the same person was already allocated with Nakuru/Tinet/Sotiki/1756 (sic).*

*(iv) That the Appeals Committee decision was bad in law as it was not based on evidence and was arbitrary and capricious.*

*(v) That the Appeals Committee erred in declaring that Elizabeth Chepkemoi and Esther Chebet Busienei were "unseen ghosts"*

*without any evidence to that effect and while the said persons are still alive.*

*(vi) That the Appeals Committee misconstrued the 1<sup>st</sup> appellant's representation thus arriving at a wrong decision not sustainable in law.*

*(vii) That the Appeals Committee decision was against the rules of natural justice and bad in law.*

10. The appellants have sought orders that the decision of the Appeals Committee be set aside and in place, the following orders be made :\_

*(a) That Elizabeth Chepkemoi Kiptoo is the rightful allottee of Nakuru/Tinet/Sotiki/144.*

*(b) That Esther Chebet Busienei is the rightful allottee of Nakuru/Tinet/Sotiki/145.*

*(c) That the Land Registrar Nakuru District be directed to amend his records and issue titles to the persons named above.*

*(d) Costs of the Appeal.*

*(e) Any other or further relief as may seem fit to this Honourable Court to grant.*

*(f) Alternatively, the case be remitted for retrial before a different panel of the Olenguruone Land Disputes Tribunal.*

11. I gave directions that the appeal be disposed of by way of written submissions, but I have only seen the submissions of Mr. Waiganjo, learned counsel for the appellants. Inter alia, Mr. Waiganjo submitted that the appeals committee heard the appeal and made a decision when Chepkwony Manyei was already deceased, having died in the year 1994. He referred me to the provisions of Order 24 Rule 4, of the Civil Procedure Rules, and submitted that the Appeals Committee did not follow the procedure on substitution prescribed by the said rule. He also argued that Chepkwony Manyei could not have been properly allocated land as he was already dead at the time of allocation. He further submitted that the 1<sup>st</sup> respondent had already been allocated the land parcel No. 1756 thus could not lawfully have been allocated the land parcel No. 145. He submitted that his allocation of the said land was therefore fraudulent. He faulted the appeals committee for declaring Elizabeth and Esther as "unseen ghosts" yet the 1<sup>st</sup> appellant held their power of attorney and could thus lawfully represent them before the Appeals Committee. He thought that the Appeals Committee was openly biased against his clients.

12. I have considered the matter and I am of the following view.

13. The first thing that needs to be appreciated is the jurisdiction of the Land Disputes Tribunal. I have already set out at the early stages of this judgment, the sort of disputes that the Land Disputes Tribunal was empowered to hear under Section 3 of the Land Disputes Tribunal Act. In my view, what the appellant presented before the Tribunal went outside the parameters of the jurisdiction of the Land Disputes Tribunal. What the appellants wanted before the Tribunal was more or less a cancellation of the allocation and title of the 1<sup>st</sup> respondent and that of his late father, and in place, the said parcels of land be registered in the names of Elizabeth and Esther. That to me is a claim for ownership and title to land. It is not a claim for division of land; or determination of boundaries; nor is it a claim to occupy or work land; nor a claim over trespass to land, which are the sort of disputes that the Tribunal was empowered by law to hear. What the 1<sup>st</sup> appellant wanted was for his two daughters to be given title to the suit properties and for the cancellation of the title of the 1<sup>st</sup> respondent and of his late father. That is a dispute over title to land which the Tribunal did not have jurisdiction to hear. Therefore the dispute that was presented before the Tribunal was beyond their jurisdiction.

14. A decision made by a body which has no jurisdiction is a decision that is null and void, and it is not necessary for me to go to lengths to quote any authority on this point. If the Tribunal proceeded to hear a dispute that was beyond its powers, then its said decision is null and void. So too the decision of the Appeals Committee. To the extent that the said two decisions were made in absence of jurisdiction, I have no option but to set the same aside.

15. I note that in this appeal, the appellants want the court to make a decision that they are the true owners of the two properties that they claim. I regret that I am unable to make that determination within this appeal. Given that I have already held that the Tribunal did not have jurisdiction to entertain the dispute, I have no jurisdiction as well to go into the substance of the matter at hand, at least not within this appeal. If the appellants still want to pursue the claim that they are entitled to the two suit properties, they need to present their claim in the right forum and that forum will proceed to determine whether or not their claim is justified after looking at all legal and factual issues.

16. There were arguments presented that the Tribunal and Appeals committee ought not to have heard the dispute because the 2<sup>nd</sup> named respondent was dead all along. That may be so, but it is the appellant who presented the dispute at the Tribunal and at that time knew that the 2<sup>nd</sup> named respondent was deceased. I do not see how he now wants to turn around and blame the Tribunal and Appeals Committee for a fault of his own making. But all this does not matter, because even if he had sued his legal representative, the fact remains that the dispute was presented before the wrong body.

17. The appellant cannot get the orders that he seeks in this appeal and I have no option but to dismiss this appeal, although it should be recalled that I have set aside the awards of both the Tribunal and the Appeals Committee for want of jurisdiction. The effect is that the properties in dispute will remain under the prevailing ownership unless and until a successful challenge is made on them.

18. On costs, it is the appellant who presented his dispute before the wrong forum. He will shoulder the costs of this appeal.

19. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 7th day of February 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Ms. Wangari for the appellant.

No appearance on the part of M/s B.W. Mathenge & Co. Advocates for the respondents.

Court Assistant : Nelima Janepher.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**