



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CIVIL APPEAL CASE NO. 20 OF 2014

HEZRON JUMA MUKANGAI

JUSTUS MESHACK MUKANGAI

JOSEPHAT MUKULWE MUKANGAI.....APPELLANTS

VERSUS

RUTH KATARA MUKANGAI

MARY MUZAMI LUCHELI

MASENO MUKANGAI

BAKHOYA MOSES MUKANGAI.....RESPONDENTS

JUDGEMENT

The appellants being dissatisfied and/or aggrieved by the aforesaid decision put forth the following principal grounds of appeal;

1. That the Western Provincial Land Disputes Appeals Tribunal erred in law in failing to hold that the Kabras Land Disputes Tribunal had no jurisdiction to entertain the claim before it thereby rendering the proceedings null and void abinitio.
2. That the Western provincial Appeals Committee erred in law in failing to hold that the Kabras Land Disputes Tribunal was an illegal tribunal, the same having been constituted by 4 members instead of 3 or 5 as prescribed by the Land Disputes Tribunal Act.
3. That the Western Land Disputes Appeals committee erred in law and fact in failing to consider adequately or at all the issues placed before it and thus reaching a wrong decision based on wrong principles of law.
4. That the Western provincial Land Disputes Appeals Committee erred in law by failing to give reasons for its decision.
5. That the Western Provincial Land Disputes Appeals Committee erred in law in failing to hold that the Kabras Land Disputes Tribunal had no jurisdiction to entertain the claim before it as the same concerns the estate of a deceased person.
6. That the Western Provincial Appeals Committee's decision had no basis in law.

The appellants pray that this appeal be allowed with costs. The Appellants submitted that the parties herein are sons and daughters of the late Festus Mukangai Lutomia who was the registered owner of land parcel No. North Kabra/ Sungurai/599. The deceased had two wives whereby the Appellants are sons of the first wife while the respondents are daughters of the second wife. The respondent filed a claim at the Kabras Land Disputes Tribunal claiming a share in the suit land. The Tribunal granted them their wish which was confirmed by the Western Provincial Land Disputes Appeal Committee as the Appeal was dismissed for lack of fresh evidence the Appellants filed this Appeal challenging the jurisdiction of the Tribunals.

The respondent submitted that, the parties are siblings and the respondents have a right to inherit their father's property. This appeal is an afterthought as it is the Appellants who went to the Western Provincial Land Disputes Appeal Committee and they should not have done so. This matter can be construed as an issue for a claim to occupy or work on land. They relied on the cases of Erastus Ndungu Thungu vs Mary Wairimu Thungu Mburu (2003) eKLR and Joyce Wanjiku Kaguara vs George Mburu & Another.

This court has carefully considered the submissions herein. This appeal is premised upon the memorandum of appeal dated 14th July 2009 which raises seven grounds, the preliminary issue in my view which is for determination is the jurisdiction of this tribunal. On jurisdiction, the operative law was the Land Disputes Tribunal Act (now repealed). Section 3 of the Act stipulated 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.”

In this case, the tribunal meandered beyond its boundaries. In *M'Marete v Republic & 3 others*, Court of Appeal, Nyeri, Civil Appeal 259 of 2000 (2004) eKLR the court held-

“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupancy or work the land, but a claim to ownership. Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under (the) Registered Land Act to the appellants. In our view, the Tribunal acted in excess of its jurisdiction.”

The tribunals in the present case dealt with title or ownership to property. The Kabras Land Disputes Tribunal on the 3rd November 2006 ruled that;

“Claimant's Late mother Sarai Mukangai is awarded 9 acres out of 40 acres from North Kabra/Sungurai/599. Subdivided as below;

1. Bakhoya Mukangai – 3.5 acres

2. Ruth Mukangai – 2.0 acres

3. Mary Mukangai – 2.0 acres

4. Sarai Maseno(for Maseno Mukangai) – 1.5 acres”

The Western Provincial Appeals Committee signed their verdict on 11th June 2009. It read;

“In view of the observations, we rule and order that;

1. The appeal is dismissed due to lack of fresh evidence.

2. The Kabras Land Disputes Tribunal court ruling stands.

3. No costs award.

4. The parties keep peace.”

The dispute between the parties before the Kabras Land Disputes Tribunal and Western Provincial appeals Committee was essentially a claim to ownership over the land. The tribunals awarded 9 acres of the suit land to the claimants or respondents herein.

For those reasons, I find that the proceedings and decision fell well outside the jurisdiction of the Kabras Land Disputes Tribunal and Western Provincial Appeals Committee. The proceedings prima facie violated the Land Disputes Tribunal Act (now repealed). In the case of *Masagu Ole Naumo v Principal Magistrate Kajiado Law Courts & Another*, Nairobi, High Court, JR 370 of 2013 (2014) eKLR. In that case, Odunga J held as follows-

“In my view the view that the Tribunal had no powers to deal with registered land is incorrect. What the Tribunal was prohibited from undertaking is a determination with respect to title to land”.

The provisions of section 3 (1) of the Land Disputes Tribunal Act No. 18 of 1990 are very clear on what matters these tribunals had jurisdiction over claims of title to registered land is not one of the matters that can or could be laid in this tribunal and the Kabras Land Disputes Tribunal and Western Provincial Appeals Committee were wrong to register, hear and pass judgment and make orders against the appellants on the title to the suit land. Having found this there will be no need to go into the merits or demerits of the proceedings in the Tribunal and Committee as they never had jurisdiction in the first place. I find that this appeal has merit and I allow the same. I quash the decision/verdict of the Kabras Land Disputes Tribunal and Western Provincial appeals Committee with no orders as to costs as the parties are siblings.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 20TH DAY OF MARCH 2019.

N.A. MATHEKA

JUDGE