



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA**

**ELCA CASE NO. 3 OF 2017**

**GERISHOM KATAMO .....APPELLANT**

**VERSUS**

**LUTOMIA JAMES**

**ENOCK MALAFU.....RESPONDENTS**

**JUDGEMENT**

The appellant herein being aggrieved by the decision/verdict of Hon. C. Kendagor RM in KAK MISC. AWARD NO. 55/02 delivered in 3/7/2012 preferred this appeal and puts forth the following grounds:-

1. The learned trial magistrate erred in law and fact in adopting the award of the elders' verdict while decision was biased.
2. The learned trial magistrate erred in law and facts by not taking into consideration that in the proprietor/title holder of the L.P. No. KAK/MALAVA/704.
3. The learned trial magistrate erred in law and facts by not taking into account that the respondents herein are illegally staying/occupying in his L.P. No. KAK/MALAVA/704 without his consent.
4. The learned trial magistrate erred in law and facts by not taking into account that his deceased father had already apportioned each and every family member their portions of land as indicated below:-
  - (a) Imbiakha James L.P. No. KAK/MALAVA/698
  - (b) Enoc Malafu L.P. No. KAK/MALAVA/699
  - (c) Imbefu James L.P. No. KAK/MALAVA/700
  - (d) Lutomia James L.P. No. KAK/MALAVA/701
  - (e) Gerishom Katamo L.P. No. KAK/MALAVA/704.
5. The learned trial magistrate together with the elders erred in law and facts in miscomprehending the matters/issued before it and the decision was predetermined as biased.
6. The learned trial magistrate failed to analyze the issues/matters before it marked to come out with proper judgment/verdict.

The appellant's prayer to court against the respondent is for the judgment/decision of Hon. C. Kendagor RM in KAK/MISC. AWARD NO. 55/02 and that of Kabras Land Disputes Tribunal be set aside, reviewed, vacated and or quashed. The respondents be condemned to costs.

This court has carefully considered the submissions herein. This appeal is premised upon the memorandum of appeal dated 23<sup>rd</sup> August 2012 which raises six grounds, the preliminary issue in my view which is for determination is the jurisdiction of the tribunal which is the basis of the decision being appealed against. On the issue of jurisdiction, the operative law was the Land Disputes Tribunal Act (now repealed).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 appellant. In our view, the Tribunal acted in excess of its jurisdiction.”*

The tribunal in the present case dealt with title or ownership to property. The ruling of the tribunal was that;

*“The panel awarded the plaintiffs’ their plots as per the boundaries demarcated by the late James Wambetsa and directed District Surveyor to go by the marked boundary. The defendant has been stopped from interfering with plot No. KAK/MALAVA/704 and to leave it alone.”*

The dispute between the parties before the Kabras Land Disputes Tribunal was essentially a claim to ownership over the land. The defendant before the tribunal who is the appellant now was and still is the registered owner of the suit parcel of land KAK/MALAVA/704.

For those reasons, I find that the proceedings and decision fell well outside the jurisdiction of the Kabras Land Disputes Tribunal. 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 was wrong to register, hear and pass judgment and make orders against the appellant 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 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 the award adopting it with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 19<sup>TH</sup> DAY OF MARCH 2019.**

**N.A. MATHEKA**

**JUDGE**