



**REPUBLIC OF KENYA**

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

**ELC APPEAL NO. 24 OF 2015**

**ROSE WANGUI KIVUNYE.....APPELLANT**

**VERSUS**

**SAMUEL MWANGI NGUGI.....RESPONDENT**

**(Being Appeal from the Provincial Land Appeals Committee Award dated 14th May, 2009 in Tribunal Claim No. 4 of 2007, Kiambu).**

**BETWEEN**

**ROSE WANGUI KIVUNYE.....APPELLANT**

**VERSUS**

**SAMUEL MWANGI NGUGI.....RESPONDENT**

**JUDGMENT**

**Introduction:**

In the month of March, 2007 or thereabouts, the respondent lodged a claim against the appellant at Kiambu District Land Disputes Tribunal (“the tribunal”). The respondent’s claim against the respondent was that the respondent had occupied his parcel of land known as Escarpment/Kinale Block 1/1761 (“the suit property”) illegally and as such she was a trespasser thereon. The respondent sought the assistance of the tribunal to have the appellant evicted from the suit property. The tribunal heard both parties and their witnesses and made an award in the matter on 11<sup>th</sup> May, 2007. In its award, the tribunal framed the issues for determination as follows:

- (i) Whether the appellant was in illegal occupation of the suit property and as such a trespasser.
- (ii) Whether the appellant as an illegal occupant of the suit property should be evicted therefrom.

On the first issue, the tribunal made a finding that the respondent had established that he was the owner of the suit property by producing before the tribunal a copy of a letter of allotment of the suit property to him dated 22<sup>nd</sup> June, 1992 and a copy of the title deed issued to him in respect of the suit property dated 21<sup>st</sup> December, 1992. The tribunal observed that the appellant had not placed any document before the tribunal to establish her claim over the suit property. On the second issue, the tribunal made a finding that the appellant was occupying the suit property illegally and as such should handover possession thereof to the respondent.

On the basis of the said findings, the tribunal held that the appellant was occupying the suit property illegally and ordered her to handover vacant possession of the property to the respondent forthwith.

**Appeal to the Provincial Land Appeals Committee:**

The appellant was dissatisfied with the decision of the tribunal and appealed against the same to the Provincial Land Appeals Committee, Central Province (“the appeals committee”). The appellant and the respondent appeared before the appeals committee and were heard on the appeal. In an award that was made on 14<sup>th</sup> May, 2009, the appeals committee upheld the decision of the tribunal to the effect that the respondent was the owner of the suit property and that the appellant was occupying the same illegally and should handover possession of the property to the respondent.

**Appeal to this court:**

The appellant was dissatisfied with the decision of the appeals committee and lodged an appeal against the same to this court on 1<sup>st</sup> July, 2009. The appellant challenged the decision of the appeals committee on the following grounds:

1. The appeals committee erred in law in adjudicating on matters touching on the ownership of the suit property.
2. The appeals committee erred in holding that the respondent had proved ownership of the suit property.
3. The appeals committee erred in law in determining the issue as to which of the two titles which were being held by the parties in respect of the suit property was valid.
4. The appeals committee erred in law in using Registry Index Maps that were produced before it to determine the validity of the two title deeds that were held by the parties without calling a professional witness to assist it in interpreting the said maps and the title deeds.
5. The appeals committee erred in law in deciding on issues of title to land in the absence of one of the owners of the land that was in dispute thereby denying him a right of audience in breach of the rules of natural justice.
6. The appeals committee erred in law in upholding the decision of the tribunal that adjudicated on the title to land against a party who lacked *locus standi*.

The appeal was argued by way of written submissions. The appellant filed her submissions on 29<sup>th</sup> August, 2018 while the respondent filed his submissions on 22<sup>nd</sup> October, 2018. I have perused the proceedings of the tribunal and the appeals committee together with the decisions that were made by them. I have also considered the grounds of appeal that were put forward by the appellant against the decision of the appeals committee and the submissions by the parties' respective advocates.

Upon careful evaluation of the appellant's grounds of appeal before the appeals committee and the decision of the said committee on the said appeal, I find no merit on the grounds of appeal put forward herein by the appellant against the said decision. I will consider the appellant's grounds of appeal one after the other. I find ground one of appeal misconceived for two reasons. First, it was the appellant who preferred an appeal to the appeals committee against the decision of the tribunal. The appellant cannot therefore blame the appeals committee for determining her appeal.

Secondly, I am not in agreement with the appellant that the dispute before the tribunal and the appeals committee concerned ownership of land. As rightly, submitted by the respondent, the dispute was over trespass to land and a claim to occupy land which the tribunal and the appeals committee had jurisdiction to determine under section 3 of the Land Disputes Tribunal Act, 1990 (now repealed). The decision of the tribunal left no doubt as the issues they had been called upon to determine. The case of Republic v Chairman Turbo/Uasin Gishu Land Disputes Tribunal & 3 Others Ex parte Daniel Kipkemei & another (2015) eKLR that was cited by the appellant in support of her submission on this point is distinguishable. In that case, the dispute was purely over the ownership of land.

The second ground of Appeal is connected to the first one. For the tribunal and the appeals committee to make a finding whether the appellant was a trespasser on the suit property, they had to determine whether the property was owned by the respondent who was alleging trespass. On the basis of the evidence that was before the appeals committee, I find no error in its finding that the respondent had established that it owned the suit property. Grounds three and four of appeal are related. Like in the first and second grounds, I find no merit in the same. The appeals committee was considering an appeal from the tribunal more particularly whether the tribunal had reached a valid decision on the law and the facts that were placed before it. The material that was placed before the appeals committee was only to enable it determine whether the tribunal had reached a correct decision. The appeals committee was not supposed to determine the dispute afresh. As was rightly pointed out by the respondent in his submissions, the appellant's husband's purported title over the suit property was not placed before the tribunal. In fact, it was issued on 26<sup>th</sup> June, 2007 after the decision of the tribunal on 11<sup>th</sup> May, 2007. The issue as to whether it was the title that was held by the respondent or the appellant's husband which was valid was not before the tribunal for determination and could not therefore have been determined by the appeals committee. The appellant's husband's purported title having been placed before the appeal's committee, the committee could not avoid commenting on it in light of the evidence that had been placed before the tribunal and before the committee. Nowhere in its decision did the appeals committee make a finding that as between the title held by the appellant's husband and that held by the respondent, the respondent's title was the valid one. The appeals committee's finding was that looking at the totality of the evidence that was before it, the respondent had established that it was the owner of the suit property and that the appellant was occupying the property illegally. The appeals committee did not also require professional witness to assist it in interpreting the Registry Index Map that was placed before it. The only issue it was called upon to determine was whether the suit property was in Registry Index Map Sheet No. 3 or No. 18 as indicated in a copy of the title deed that had been produced by the appellant. It was the duty of the parties to call relevant witnesses to prove their respective cases. It was not the duty of the tribunal or the appeals committee to call evidence. The appellant's argument that the appeals committee erred in making a determination on an issue before it without calling professional witness to assist it has no basis.

With regard to grounds five and six of appeal, I am in agreement with the submission by the respondent that the respondent's claim against the appellant before the tribunal and the appeals committee was for trespass and unlawful occupation of land. It was not disputed before the tribunal and the appeals committee that it was the appellant who was in possession of the suit property. A trespass claim could only be maintained against a person in occupation. The appellant's husband was not in occupation of the suit property. The respondent had no business therefore lodging a complaint against him. Due to the foregoing, I find no merit in grounds five and six of appeal.

#### Conclusion:

In conclusion, I find no merit in the appellant's appeal. The appeal fails wholly and the same is dismissed with costs to the respondent. The appellant shall vacate and handover possession of L.R. No. Escarpment/Kinala Block 1/1761 to the respondent within one hundred and

twenty (120) days from the date hereof failure to which warrants of eviction shall issue for her forceful eviction from the property.

**Delivered and Dated at Nairobi this 30<sup>th</sup> Day of April 2019**

**S. OKONG'O**

**JUDGE**

**Judgment read in open court in the presence of:**

N/A for the Appellant

N/A for the Respondent

C. Nyokabi-Court Assistant