



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC APPEAL NO. 4 OF 2018

MARY MUKHONJA.....APPELLANT

VERSUS

MAXWEL BURUDI.....1ST RESPONDENT

JOSEPH KEDIMUK.....2ND RESPONDENT

(Being an Appeal from the Ruling of Kwanza Land Disputes Tribunal read and adopted by the Kitale Magistrates Court on 3/4/2009 in Kitale Land Case No. 75 of 2008 by Hon. E.A. OBINA (Resident Magistrate))

JUDGMENT

1. In his Memorandum of Appeal dated 14/4/2009 and filed in court on 5/2/2019 the appellant raised the grounds which I set out herein below verbatim as follows:-

- (1) That the Honourable Tribunal erred in both in law and fact by not considering the fact that the appellant is the registered owner of plot under Cap 300 Laws of Kenya.**
- (2) That the Honourable Tribunal Court erred in law and fact by entering the claim of the respondents who created their own problems by buying land from unknown owner.**
- (3) That the Honourable Court erred in both fact and law by overstepping their mandate in awarding the claimant my land without due consideration to land ownership.**
- (4) That the Honourable Tribunal erred in law and fact by deliberating on a matter that is registered under Cap 300 Laws of Kenya.**
- (5) That the Honourable Tribunal Court erred in law and fact by believing the evidence of the alleged purchaser/claimant that I was a signatory in the sale agreement.**
- (6) That said tribunal erred in hearing a dispute where there was no claim filed and presented as required by Section 3(2) (3) and (4) of the Land Disputes Tribunal Act No. 18 of 1990.**
- (7) That the honourable court decision is unlawful and therefore cannot be enforced as it would create a breach of peace in the suit land.**
- (8) That the honourable tribunal court erred in law and in fact by imposing a stranger in the appellants land.**

2. The genesis of this appeal lies in the Kwanza Land Disputes Tribunal case No. **KLTD/25/2008** filed by **Mary Mukhonja** the appellant herein, before the Kwanza Land Disputes Tribunal which was heard and the award therein made adopted as judgement in **Kitale Chief Magistrates Court Land Case No. 75 of 2008**.

3. Later on the appellant herein filed an appeal before the Rift Valley Province Land Disputes Appeals Committee which was heard but a decision was not issued. That appeal was transferred into this court and is the appeal now before this court for determination.

4. The appellant filed her submissions on the **26/3/2019**. By the time of writing of this judgment the respondents had not filed any submissions.

5. In the appellant's submissions dated 26/3/2019 the issue of jurisdiction of the Land Disputes Tribunal to hear and determine the dispute was raised.

6. The objection raised by the appellant is that under **Section 3(1)** of the **Land Disputes Act** the Kwanza Land Disputes Tribunal had no jurisdiction to handle the matter as the land in question was registered land having been so registered under the **Registered Land Act, Cap 300** (now repealed).

7. As earlier stated, this appeal was first filed before The Rift Valley Province Land Appeals Committee on 14/4/2009. It was left spectacularly hanging in the air, so to speak, by the abrupt repeal of the **Land Disputes Tribunals Act No. 18 of 1990**. Subsequently vide **Kitale ELC Misc. App. 2 of 2018** the same was transferred to this court for determination in accordance with the decision of the Court of Appeal regarding such matters, made in **Christopher Wafula Mutoro Vs Richard Lordia Lokere Eldoret CA 71 of 2017**.

8. Though on 5/3/2019 Mr. Samba for the respondents admitted having been served with the memorandum on this appeal is not opposed and as I have already indicated, only the appellant filed submissions in this matter on 26/3/2019 in compliance with this court's directions made on 5/3/19.

9. I have examined all the grounds raised by the appellant in my view though there are other grounds in the memorandum of appeal this court needs only assess the merits of one chief ground namely, whether the tribunal erred in entertaining a dispute relating to registered land because if the answer to this issue is in the positive, this ground, may be sufficient to dispose of this appeal.

10. At **page 5** of the appeal record is the record of the proceedings taken before the Land Disputes Tribunal in Kwanza Land Disputes Tribunal Case No. **KLD/25/2008**. The land subject matter of this proceedings is not described therein in any manner that may give the court a clue that it is registered. However at **page 18** of the record is a copy of the title to the land. The same shows that the land in question was registered in the joint names of the appellant and one Joshua Mwachi Burudi on 4/10/2006. Therefore at the commencement of the dispute before the land disputes tribunal in the year 2008, the land was already registered under the **Registered Land Act**.

11. Numerous decisions abound on whether the land disputes tribunals had jurisdiction to deal with disputes concerning registered land. The appellant cited **Asman Weloba Wepukhulu and Another Vs Francis Wakwabubi Biketi Kisumu CA No 157 of 2001**. There are other decisions both from this court and from the Court Of Appeal such as **M'Marete vs. Republic & 3 Others, [2004] eKLR (Civil Appeal No. 259 of 2000, Court of Appeal sitting at Nyeri)** and **Kasimu Kilatya v Chairman Machakos Land Dispute Tribunal & 2 others [2017] eKLR, C.A at Nairobi Civil Appeal No. 220 of 2015**, which emphasize the same point.

12. Based on the above decisions, I find that the land disputes tribunal had no mandate to deal with disputes falling outside the confines of the statutory provisions of **Section 3(1)** of the **Land Disputes Tribunal Act** from which it was supposed to source its jurisdiction. The tribunal could not create jurisdiction for itself apart from the Act. As stated in the case of **Owners of Motor Vessel 'Lillian S' -vs- Caltex Oil (Kenya) Limited, [1989] KLR 1**, jurisdiction flows from the law and the recipient tribunal in this case was to apply the law with any limitations embodied therein. It could not arrogate to itself jurisdiction through the craft of interpretation or by way of endeavours to discern or interpret the intentions of Parliament, where the wording of legislation is clear and there is no ambiguity.

13. In conclusion, I therefore find that the appeal has merit. I therefore grant the appeal and make the following orders:

(a) **This appeal is hereby allowed.**

(b) **The Elders Award filed in Chief Magistrates Court in Kitale Land Case No. 75 of 2008 and adopted as judgment on 3/4/2009 and all consequential proceedings and orders are hereby set aside.**

(c) **The costs of this appeal will be borne by the respondents.**

Dated, signed and delivered at Kitale on this 13th day of May, 2019.

MWANGI NJOROGE

JUDGE

13/5/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Munialo for Appellant

Respondents (in person) absent

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

13/5/2019