



**REPUBLIC OF KENYA**

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

**ELC NO. 97 OF 2018**

**LUCY WANJUI NGERO.....1<sup>ST</sup> APPELLANT**

**MARAGERT WANJIKU THUO.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**HANNAH NJERI GITAU.....1<sup>ST</sup> RESPONDENT**

**ONESMUS MUIRURI.....2<sup>ND</sup> RESPONDENT**

**EPHRAIM KIHARA.....3<sup>RD</sup> RESPONDENT**

**KARIUKI THEURI.....4<sup>TH</sup> RESPONDENT**

**JOHN NGARUIYA.....5<sup>TH</sup> RESPONDENT**

**BENDETTA NYAMBURA MBIRA.....6<sup>TH</sup> RESPONENT**

**HARUN MBITU KAMAU.....7<sup>TH</sup> RESPONDENT**

**MUNGA NJUTHI.....8<sup>TH</sup> RESPONDENT**

**MAINA MWANGI.....9<sup>TH</sup> RESPONDENT**

**SIMON KARACHO.....10<sup>TH</sup> RESPONDENT**

**JOSPHAT KARIUKI.....11<sup>TH</sup> RESPONDENT**

**PHILIP MWANGI.....12<sup>TH</sup> RESPONDENT**

**JUDGMENT ON APPEAL**

***(Appeal from decision of the Land Disputes Appeals Committee under the Land Disputes Tribunal Act; dispute presented before the Tribunal by the respondents and their case dismissed; respondents filing appeal to the Appeals Committee which allowed their appeal; further appeal to this court on grounds that the Tribunal lacked jurisdiction; dispute being over ownership of land; clear that the Tribunal did not have jurisdiction; appeal allowed but no orders as to costs).***

1. The origin of this appeal is that the 11 respondents filed a reference against the appellants before the Nakuru District Land Disputes Tribunal (the Tribunal) which case was registered as Claim No. 627 of 2006. The respondents claimed that they were shareholders of Maciaro Farmers Company Limited (apparently a land buying company) and alleged that Lucy Wangui Ngeru, the 1<sup>st</sup> appellant, sold a company plot No. Solai/Kirima Block 3/55 (Maciaro) measuring approximately 0.1490 Ha to the 2<sup>nd</sup> appellant, Margaret Wanjiru Thuo (the 1<sup>st</sup> and 2<sup>nd</sup> objectors respectively before the Tribunal), without authority from the Company Committee and Directors. From the minutes of the Tribunal, I have discerned that Lucy Wangui Ngeru, was the Chairlady of the company whereas among the complainants was Hellen Njeri Gitau, who served as Treasurer. The Tribunal identified the issue before it as to who was the rightful owner of the said plot Solai/Kirima / Block 3/55 (hereinafter referred to as “the suit land”). After taking evidence, the Tribunal held that the claimants had failed to prove their case. It held that the suit land belongs to the 2<sup>nd</sup> appellant who received it from her husband, one George Thuo, who in turn was allocated the land by the company on 19 May 1998 and subsequently obtained title to it. The respondents were aggrieved and they filed an

appeal before the Rift Valley Province Land Disputes Appeals Committee. The Appeals Committee found that the company recorded all its members in a register showing the plots that they are entitled to and that this register was kept in the D.Os office, the Lands office, the Chief's office and with a caretaker committee. The Appeals Committee were of the view that the suit land appears to be assigned to the company in the registers held at the D.Os office, the Lands office and the Chief's office, but only that held by the caretaker committee bore the name of the 2<sup>nd</sup> appellant. They held the opinion that this register had been tampered with and held that the plot belongs to Maciaro Farmers. They further ordered that any title deed issued to anybody else other than Maciaro Farmers Company Limited should be surrendered to the Land office for cancellation, leaving the plot totally vacant for the company.

2. This time, it was the turn of the appellants to be aggrieved, and they duly filed this appeal on 10 February 2012 in the High Court. The appeal was later transferred to the Environment and Land Court for determination. The appeal is based on two grounds being :-

*(i) That the Appeals Committee acted in a matter where it had no jurisdiction and/or it exceeded its jurisdiction.*

*(ii) That the Appeals Committee failed to appreciate that the Tribunal had acted in a matter where it had no jurisdiction.*

3. When the appeal came up for hearing on 21 March 2019, Mr. Katithi, learned counsel for the respondents, conceded to the appeal and held the opinion that the Tribunal did not have jurisdiction. I have considered this concession and also the submissions of Mr. Rubua Ngure for the appellants where he pressed the point that the Tribunal did not have jurisdiction and I have to allow this appeal.

4. The jurisdiction of the Land Disputes Tribunal was canvassed at Section 3 of the Land Disputes Tribunal Act, CAP 303A, Laws of Kenya (repealed by the Environment and Land Court Act, 2011) 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.*

5. It will be seen from the above that the jurisdiction of the Land Disputes Tribunal was not general but was pretty limited. In our case, the suit before the Tribunal was not one for division of or determination of boundaries to land; neither was it one that was a claim to occupy or work land; and it certainly was not a dispute over trespass to land. The dispute, as correctly presented by the Tribunal, was one over ownership of the suit land. The Tribunal did not have jurisdiction to determine disputes over ownership of land and had no jurisdiction to make orders of cancellation of title. It is thus clear that the Tribunal did not have jurisdiction to hear the case. It follows that the Appeals Committee also could not have had the requisite jurisdiction to go to the merits of the case and their decision also suffers from not being one that was within jurisdiction.

6. There is really no point of saying more as it is clear, and has indeed been conceded by the respondents, that the Tribunal had no jurisdiction. That being the case, the award of the Tribunal and the decision of the Appeal's Committee are hereby set aside.

7. The only issue is costs. The respondents presented a case before a body that was devoid of jurisdiction, but it does seem that the appellants were also happy to appear before it, and in fact enjoyed orders that the Tribunal issued in their favour before the reversal by the Appeal's Committee. I also note that the respondents conceded this appeal. In the instance of this case, and in exercising of my discretion, I find that the best order is that each party bears his/her own costs.

8. The appeal is thus allowed without any orders as to costs.

9. Judgment accordingly.

**Dated, signed and delivered in open court at Nakuru this 26<sup>th</sup> day of June 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

Mr Kimani holding brief for Mr. Ngure for the appellant.

Mr. Musa Machage holding brief for Mr. Gakinya for the respondent.

Court Assistants: Nelima Janepher/Patrick Kemboi.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**