



**REPUBLIC OF KENYA**

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

**CHUKA ELC CIVIL APPEAL CASE NO. 07 OF 2018**

**SAMUEL GAICHU RINJEU.....APPELLANT**

**VERSUS**

**MITAMBO MANGAARA.....RESPONDENT**

**JUDGMENT**

(Being an appeal from the ruling and decision of the minister dated 12<sup>th</sup> day of March, 2018 in Tharaka North Sub-County appeal to the Minister Case No. 176/2017)

1. The Memorandum of Appeal in this matter reads as follows:

**MEMORANDUM OF APPEAL**

The appellant herein appeals against the ruling of V.A. Matsala Deputy County Commissioner Tharaka North Sub County dated the 12<sup>th</sup> of March, 2018 in Tharaka North Sub County appeal to the minister Case NO. 176/17 on the following grounds.

1. That the minister failed to appreciate the fact that the matter was first heard and decided in favour of the appellant by the D.O. in 1983 and that the respondent did not raise any objection until 2007 when his right to lodge an appeal was already extinguished and/or time barred.
2. The minister failed to take into account the objection raised by the appellant both at the district level and during the hearing of the appeal to the minister.
3. The minister failed to take into account the fact that the matter proceeded at the district level without the appellant being notified of the hearing dates or in time thus resulting into miscarriage of justice.
4. The minister failed to address the dispute by purporting that the plaintiff appeared to have lodged an appeal against his own parcel when the dispute revolved around the disputed creating of parcel 2298 within parcel 396 which was the mother parcel.
5. The minister erred in finding that the appellant had been locked out from appealing to the minister yet the appellant was not aware of the newly created parcel 2298.

**Reasons wherefore** the appellant prays that its (sic) appeal be allowed and that the ruling of the minister be set aside.

**DATED AT NAIROBI THIS 2<sup>ND</sup> DAY OF AUGUST, 2018.**

**T.T. NGANGA & ASSOCIATES**

**ADVOCATES FOR THE APPELLANT**

2. This appeal was canvassed by way of written submissions.

3. The appellant's written submissions are reproduced in full herebelow without erasure or correction of any spelling or other mistakes which may be there.

**SUBMISSIONS**

The appellant herein seek judgment against respondent and rely on record of appeal namely:-

- Memorandum of Appeal dated 2<sup>nd</sup> August, 2018
- Supplementary list of documents dated 11<sup>th</sup> November, 2018
- Notice of Motion dated 20<sup>th</sup> November, 2018
- Supporting affidavit dated 20<sup>th</sup> November, 2018
- Supporting documents marked as pages 1 to 26

The appellant herein seek orders among others:-

- That, application herein is not contested despite service being done as per affidavit of service in court.
- That, the court of minister failed and/or refused to appreciate the fact that the matter was heard and decided in favour of appellant by the D.O. in 1983 and that respondent did not appeal and/or raise any objection until 2007 when his right to appeal was already extinguished and or time barred. (Kindly see page 26).
- That, the court of minister refused and or failed to take into account the objections by the applicant both at district level and during the hearing of appeal to the minister (pages 17, 18, 21, 22, 23, 24 and 25).
- That, the court of minister abused its mandate by failing and or refusing to address the grievance; ending up confirming theatricality of the findings of the lower court effectively conferring illicit benefit to the respondent.
- That, proceedings before court of the District Land Adjudication and Settlement Officer, entertained 29 years after D.O.s ruling of 1983 were pure sham in:-
- That, witness on record for the applicant Mitambo Mbatu has a history of mental illness spanning to over several years prior to the said hearing of 7<sup>th</sup> June, 2007.
- That, court of District Land Adjudication and Settlement Officer fell far much below threshold of fully constituted court as it comprised of only the said officer, complainant, complainant's witness and respondent.
- That, the court of District Land Adjudication and Settlement Officer sat on 7<sup>th</sup> June, 2007. (See page 10). As at the time of filing the appeal to the minister on 16<sup>th</sup> October, 2007, (see pages 19-10) parcel No. 2298 which forms the subject of this matter, had not been created and appeal was pegged to the then only existing parcel No. 396 and as per guidance of the said officer and confirmed by his letter dated 2<sup>nd</sup> May, 2012 (see page 16).
- That, further to above, the respondent Mitambo Mangara confirms creation of parcel No. 2298 on 9<sup>th</sup> May, 2012; 5 years after the ruling of the court of District Land Adjudication and Settlement Officer and filing of the appeal to the Minister. (See Paragraph 4 of page 3).
- That, further to above material facts, there is profound miscarriage of justice in that the minister failed and or refused to consider that against rules of natural justice, District Land Adjudication and Settlement Officer ignored his own letter dated 2<sup>nd</sup> May, 2012 (see page 16); and hence irregularly and illegally curved out parcel NO. 2298 on 9<sup>th</sup> May, 2012 and went ahead to cause issuance of the title deed to Mitambo Mangara.
- That, further to above, the said letter dated 2<sup>nd</sup> May, 2012 (kindly see page 16) does not indicate there is another parcel of land other than parcel No. 396.
- That, findings of the court of the minister (see page 4 paragraph 2), further confirms the irregular, illegal and fraudulent creation of parcel No. 2298.

**CONSEQUENTLY, IT IS HEREIN PRAYED:-**

- That, this honourable court being temple of justice finds and holds that there is extreme miscarriage of justice meted out to the appellant herein by the lower courts.
- That, this temple of justice declines rewarding impunity by:-
- Quashing creating of parcel No. 2298 and restoring the original size of parcel No. 396
- Cancelling title deed issued to respondent Mitambo Mangara

- Order issuance of Title deed to appellant herein Samuel Gaicu Renjeu of Parcel No. 396 in its original state.
- That, this temple of justice grants orders as sought and any other relief the court may deem fit.

Dated this day 23<sup>rd</sup> of May, 2019

CELESTINE MWENDA MUNENE

**DULY APPOINTED ATTORNEY FOR THE APPELLANT**

4. The respondent's written submissions are reproduced in full herebelow without any erasure or correction of any spelling or other mistakes if they are there.

**RESPONDENT'S WRITTEN SUBMISSIONS**

**INTRODUCTION**

Your Lordship, we hereby tender submissions on behalf of the Respondent as follows;

**BACKGROUND**

Your Lordship, the appeal herein emanates from the decision of the minister in appeal case No.176/17 Irunduni Adjudication section. We shall thus proceed to submit on the pertinent areas in relation to the issues for determination.

**ISSUES FOR DETERMINATION**

**1. Whether the Honourable Court has Jurisdiction to hear and determine this appeal.**

Your Lordship it is now settled that jurisdiction everything and without it, the court must down it tools. A decision by a court or tribunal without requisite jurisdiction is a nullity and of no legal effect whatsoever. That is why a court of law must be satisfied that it has jurisdiction before embarking to determine any dispute placed before it for determination.

Section 29(1) of the Land Adjudication Act provides as follows;

***1. "Any person who is aggrieved by the determination of an objection under Section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by:-***

***a. Delivering to the Minister an Appeal in writing specifying the grounds of the appeal; and***

***b. Sending a copy of the Appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final."***

The afore-quoted provisions of *Section 29(1) of the Land Adjudication Act, Cap. 284* are couched in mandatory terms by usage of the words "...the order shall be final..." It is clear that once the minister has rendered his decision, that is the end of the process. The decision of the Minister cannot be appealed against. Having ably demonstrated that this court is not seized of the indispensable jurisdiction to hear this case, we implore Your Lordship to proceed and dismiss the appeal, with costs to the Respondent.

Your Lordship in the case of **Onesmus Daniel Masumbuko & others v Augustino Baya Thotho [2019] eKLR** J.O OLOLA while dismissing a similar appeal had this to say:

**"From the material placed before me, it is not in dispute that the proceedings before me emanate from the decision of the Ministerial Panel acting pursuant to the Land Adjudication Act. The Land Adjudication Act has an inbuilt dispute resolution mechanism which starts at the lowest level which is the Adjudication Committee up to the highest level which is an appeal to the Minister responsible for the lands docket. That machinery has now been exhausted and as we have seen, Section 29(1) (b) provides that the decision of the Minister is final.**

**At it were, the Act has not provided for a further appeal to this Court from the decision of the Minister. I am accordingly in agreement with the Preliminary Objection raised by the Respondent though not in very precise terms, that this Court has no jurisdiction to sit on appeal against the decision of the Minister made under the Land Adjudication Act. It is clear to me that this Court cannot entertain a dispute of this nature arising from the adjudication process save in the exercise of its supervisory jurisdiction.**

**That being the case and the Minister's decision being an administrative action, the Appellants could only come to this Court if there was sufficient reason therefore, by way of judicial review. Otherwise in the circumstances before me the Appeal herein is misconceived and without any foundation. The same is struck out with costs to the Respondents.**"(Emphasis added)

We further rely on the following authorities

1. **Narikiso Oyugi Akech v Elijah Onyango(Sued as the Administrator of Joash Onyango Achieng – (Deceased) [2018] eKLR**
2. **KIVINGA MULI v KITUI DISTRICT LAND REGISTRAR & ANOTHER[2010] eKLR**
3. **Onesmus Daniel Masumbuko & others v Augustino Baya Thotho [2019] eKLR**
2. **Whether the Appellant is entitled to the reliefs sought in the Appeal.**

Your Lordship, we humbly submit that guided by the above determined issue, the appeal is an abuse of court process and therefore the same must fail.

We further submit that even if the court was to consider the grounds in the memorandum of appeal, the appeal would still fail. The grounds of appeal are baseless considering the well grounded findings of the minister.

Your Lordship, the Appellant herein was the appellant in the appeal before the minister. The issues raised in the memorandum of appeal were exhaustively addressed by the minister and a decision made with full and active participation of the Appellant. He therefore, cannot purport to question the Minister’s decision simply because it went contrary to his expectations

It follows that the Appellant has dragged the Respondent into unnecessary litigation and therefore ought to be condemned to pay costs of the suit to the Respondent.

### **CONCLUSION**

In a nutshell, Your Lordship, the Honorable Court lacks jurisdiction to determine the appeal. We therefore pray that the Appeal herein be dismissed with costs to the Respondent.

We so humbly pray.

**DATED AT MERU THIS 28<sup>TH</sup> DAY OF MAY, 2019**

.....  
**FOR. MITHEGA & KARIUKI**

### **ADVOCATES FOR THE RESPONDENT**

5. I have considered the submissions proffered by the parties in support of their diametrically divergent assertions. The appellant did not proffer any case law. The authorities proffered by the respondent are relevant to the facts and circumstances of this appeal. As the principles enunciated by those authorities have been elaborated upon in the apposite submissions which have been reproduced in full in the earlier part of this ruling, I do not find it necessary to regurgitate them.

6. I need not reinvent the wheel. I agree with the authorities proffered by the respondent that section 29 of the Land Adjudication Act is unequivocal that the decision of the minister in any appeal apposite to Land Adjudication is final. This position is buttressed by the decision of the Court of Appeal at Malindi in **WATUKO MUTSIEMI WATUKU & ANOTHER VERSUS REPUBLIC & 5 OTHERS [2018]eKLR** where the court opined as follows:

***“...Coming to the issue of whether the decision of the 2<sup>nd</sup> respondent was ultra vires, unfair, biased or tainted with illegality, the appeal in issue was filed under Section 29 of the Land Adjudication Act. It was a final appeal under the Land Adjudication process, subject only to the judicial review jurisdiction of the High Court. It was therefore not an avenue for an appeal on the merits of the case.”***

7. Ipso facto, I find that this court has no jurisdiction to entertain, hear and determine this appeal. **Justice Nyarangi, JA**, as he then was, in the case of **“The MV Lilians “S” versus Caltex Oil (Kenya Ltd) [1989] KLRI** opined as follows:

***“...Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction...”***

8. I find it necessary to comment on one issue raised by the appellant. This was that as his application had not, at one time, been contested by the respondent despite service having been executed, then the appeal must be allowed. This notion should be debunked summarily. Where a court of law has no jurisdiction, the impugned suit, in this case this appeal, cannot be, in any way, sanitized by procedural impurities.

9. In the circumstances, judgment is issued in the following terms:

(i) This appeal is hereby dismissed.

(ii) Costs are awarded to the respondent.

10. Orders accordingly.

Delivered in open court at Chuka this **31<sup>st</sup> day of July, 2019** in the presence of:

CA: Ndegwa

Linus Ndungu h/b Manasses Kariuki for the Respondent

Celestine Mwenda Munene son of the Appellant

**P. M. NJORGE,**

**JUDGE.**