



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 21 OF 2004**

**REGINA NANGUNDA TUDWE.....APPELLANT**

**VERSUS**

**MARGARET NASIMIYU WASIKE.....RESPONDENT**

**J U D G M E N T**

The parties in this appeal are siblings and their dispute with regard to the ownership of the land parcel **NO W BUKUSU/N. MYANGA/1909** (the suit land),

then registered in the names of the Appellant was heard by the **BUMULA LAND DISPUTES TRIBUNAL** (the Tribunal). The dispute had been filed by the Respondent on 30<sup>th</sup> October 1996 claiming a share of what she claimed she had inherited from her father. In a verdict dated 2<sup>nd</sup> July 1998, the Tribunal made four (4) orders but only order No. 2 is relevant for purposes of this Judgment. It reads as follows:-

***2: "The fraudulently owned land parcel number WB/N.MYANGA/1909 be cancelled. New Land transaction forms be filled by Objector REGINA NANG'UNDA TANDWE, Claimant MARGARET NASIMIYU and third buyer AMISI ASIRA ORUNGU to warrant them get new land parcel numbers accordingly."***

The parties were informed of their right of appeal which the Appellant duly exercised and filed appeal case **No. 72 of 1998** at the **PROVINCIAL LAND DISPUTES APPEALS TRIBUNAL at KAKAMEGA** (the Appeals Tribunal). Upon hearing the appeal, the said Appeals Tribunal dismissed it with costs.

The Appellant then moved to this Court and filed this appeal on 25<sup>th</sup> October 2004 which was admitted for hearing by **SERGON J** on 20<sup>th</sup> June 2005.

When the parties appeared before me on 8<sup>th</sup> October 2018 for directions, it was agreed that the appeal be canvassed by way of written submissions with each party having 14 days to file and serve. However, only the Appellant's counsel filed his submissions. I have therefore not had the advantage of considering the submissions by the Respondent's counsel nor any explanation as to why he did not file the same.

The appeal itself raises the following five (5) grounds:-

- 1. The Tribunal did not have jurisdiction to deal with the matter of title.**
- 2. The Tribunal lacked jurisdiction to cancel title of another and give it to the other party.**
- 3. The Tribunal lacked jurisdiction to deal with matter under Registered Land Act.**
- 4. The Tribunal did not have jurisdiction to deal with matters barred by law under Limitation of Actions.**
- 5. The verdict was against the weight of the available evidence.**

This appeal can be determined on the sole issue of whether or not the Tribunal had the jurisdiction to cancel the Appellant's title to the suit land and whether the Provincial Appeals Committee was right in up – holding that decision which had earlier been adopted as a Judgment of the **SENIOR PRINCIPAL MAGISTRATE'S COURT BUNGOMA IN LDT CASE NO 56 OF 2003**.

The dispute between the parties was heard by the Tribunal in exercise of its mandate as set out under Section 3(1) of the repealed **LAND DISPUTES TRIBUNAL ACT**. That section provided as follows:-

“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.”

Counsel for the Appellant has submitted, and rightly so in my view, that the Tribunal exceeded its jurisdiction by cancelling the Appellant’s title to the suit land. It is clear from the record that the dispute between the parties herein did not fall within the provisions of **Section 3(1) of the repealed law**. It was a dispute over ownership of registered land because at the time of the dispute, the Appellant was the registered proprietor of the suit land having obtained a title thereto on 20<sup>th</sup> February 1995 following her registration as proprietor on 1<sup>st</sup> November 1994. Therefore, by the time the dispute was filed in the **BUMULA LAND DISPUTES TRIBUNAL** on 30<sup>th</sup> October 1996, the Appellant was the legal proprietor of the suit land holding a title issued under the then Registered Land Act. It is now well settled that a Tribunal exercising its jurisdiction under the repealed law had no powers to determine a dispute relating to ownership of registered land – **JONATHAN AMUNAVI V. CHAIRMAN SABATIA DIVISION LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL NO 256 OF 2002 (KISUMU)**. In this case now before me, the Tribunal went ahead to cancel the Appellant’s title to the suit land so that the Respondent and another person **AMISI ASIRA ORUNG** (who was not even a party) could get a share. That decision was up – held on appeal but it is clear that the Appeals Committee similarly acted in excess of its jurisdiction. In the case of **BEATRICE M’MARETE V R. EX – PARTE JOHN GITONGA MBUI & OTHER C.A CIVIL APPEAL NO. 259 OF 2000 (2004 eKLR)**, the Court was dealing with a similar situation to this one where the Tribunal purported to share out a parcel of registered land to the parties. The Court had no hesitation in making a finding that the Tribunal acted in excess of its jurisdiction and after citing the provisions of **Section 3(1) of the Land Disputes Tribunal Act 1996**, it went on to state that:-

*“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupy 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.”*

It is also clear from the award of the Tribunal herein that its implementation would have resulted in the opening of new registers by cancelling the Appellant’s title **NO WEST BUKUSU/NORTH MYANGA/1909** in order to give the Respondent and another person part of the suit land. That would be beyond the Tribunal’s jurisdiction. This is what the Court of Appeal in the **JOTHAM AMUNAVI** case (supra) had to say:-

*“ ..... if the implementation of the decision of the Tribunal entails the sub-division of the suit land into two parcels, opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre its clear that the proceedings before the Tribunal related to both title to land and to beneficial interest in the suit land and such a dispute is not within the provisions of Section 3(1) of the Land Disputes Act as such disputes can only be tried by the High Court, or by the Resident Magistrate’s Court where such latter Court has jurisdiction.”*

In view of the foregoing, this Court finds that the Tribunal went beyond its jurisdiction in making the award that it did. This appeal is accordingly allowed with the result that the Tribunal’s award as adopted by the Court on 20<sup>th</sup> May 2004 is hereby set aside. As the parties are siblings, each shall meet their own costs.

**Boaz N. Olao.**

**J U D G E**

**9<sup>th</sup> October 2019.**

Judgment dated, delivered and signed in Open Court this 9<sup>th</sup> day of October 2019 at Bungoma.

Mr. Were for Mr. Kundu for Appellant present

Mr. Areba for Respondent absent

Joy/Okwaro – Court Assistants

Right of Appeal explained.

**Boaz N. Olao.**

**J U D G E**

9<sup>th</sup> October 2019.