



**REPUBLIC OF KENYA**

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

**ELCA CASE NO. 21 OF 2019**

**CHARLES MAKANDA MANG'OLI.....APPELLANT**

**VERSUS**

**MARTIN FWAMBA WANYAMA.....RESPONDENT**

**JUDGEMENT**

Being dissatisfied with the decision and or judgement of the Western Provincial Appeals Committee read to the parties on 10<sup>th</sup> July 2003 the appellant who was the appellant at the said Provincial Appeals Committee appealed to this honourable court against the said award/judgment and sets forth the following grounds of appeal:-

1. That the appeals committee erred in not considering the appeal on the basis of the evidence on record but on the basis of fresh evidence adduced before it.
2. That the Appeals Committee erred in law and fact in treating the appeal as a fresh matter before it contrary to the law.
3. That the Appeals Committee erred in law by not addressing the issue whether or not the matter in dispute fell within the jurisdiction of the Land Disputes' Tribunal.
4. That the appeals committee erred in law and fact in allowing the land dispute tribunal's decision when he said tribunal had no jurisdiction to entertain the claim.
5. That the Appeals Committee erred in law in making an award in support of the respondent without establishing ownership of the title.
6. That the Appeals Committee erred in law in making an award whose subject matter was not stated.

The appellant prays that:

1. The decision of the Appeals Committee upholding the decision of the Mumias Land Disputes' Tribunal be set aside.
2. The costs of this appeal and of the proceedings below be awarded to the appellant.

The appellant submitted that, the Provincial Land Disputes Appeals Tribunal erred in law by not addressing the issue whether or not the matter in dispute fell within the jurisdiction of the Land Disputes' Tribunal and further erred in law and fact in allowing the Land Disputes Tribunal's decision when the said tribunal had no jurisdiction to entertain the claim. That, although the Memorandum of Appeal indicates several grounds of appeal, in our view jurisdiction is everything and we humbly submit that by determining the grounds on jurisdiction the matter will have been determined.

They submitted that, Section 3 of the now repealed Land Disputes Tribunal Act No. 18 of 1990 was clear as to what issues the tribunals under that Act were mandated to adjudicate upon. Their jurisdiction was limited to determining:

- a) The division of or the determination of boundaries to land, including land held in common;
- b) A claim to occupy or work on land, or
- c) Trespass to land.

The Provincial Land Disputes Appeals Tribunal upheld the decision of the Matungu Land Disputes Tribunal which decision was completely outside the provisions of the Act, thus by ordering that the District Land Surveyor and Land Registrar to survey the five(5) acres for complainant and mark boundaries and further that the complainant be issued with the and title deed by the Land Registrar for five(5) acres, the two tribunals at both levels lacked jurisdiction. On the other hand, the tribunal, by ordering that the respondent to work and occupy the five(5) acres of land bought by his late father since full payment was done, the tribunal exceeds its jurisdiction under the Act and started addressing the issue of a sale of land contract which is not envisaged under Section 3 of the repealed land disputes tribunal act No. 18 of 1990, they submit that the tribunal had no jurisdiction to start determining whether parties to the sale agreement had complied with the law of contract. They relied on the authority of Eldoret Court of Appeal Civil Appeal No. 47 of 2009 between Zebedayo Korosia and Eliud Wepukhulu Khaukha and the Hon. Attorney General.

This court has carefully considered the submissions herein. This appeal is premised upon the memorandum of appeal dated 9<sup>th</sup> September 2003 which raises six grounds. The preliminary issue in my view which for determination is the jurisdiction of this tribunal. On ground 3 and 4 of the appeal, the operative law was the Land Disputes Tribunal Act (now repealed). Section 3 of the Act stipulated 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.”*

In this case, the tribunal meandered beyond its boundaries. In *M'Marete v Republic & 3 others*, Court of Appeal, Nyeri, Civil Appeal 259 of 2000 (2004) eKLR the court held-

*“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupancy 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 appellants. In our view, the Tribunal acted in excess of its jurisdiction.”*

The tribunals in the present case dealt with title or ownership to property. The Land Disputes Tribunal at Matungu delivered the following verdict:-

- 1. The complainant to occupy and work on the land of five(5) acres which was bought by his late father since full payment was done.*
- 2. The district land surveyor and land registrar to survey the five(5) acres for complainant and mark boundaries.*
- 3. The complainant be issued with land title deed by the Land Registrar for five(5) acres.*

The Provincial Land Disputes Tribunal adopted the reasoning of the Matungu Land Disputes Tribunal and upheld the same. The dispute between the parties before the Matungu Land Disputes Tribunal and Western Provincial Appeals Committee was essentially a claim to ownership over the land.

For those reasons, I find that the proceedings and decision fell well outside the jurisdiction of the Matungu Land Disputes Tribunal and Western Provincial Appeals Committee. The proceedings prima facie violated the Land Disputes Tribunal Act (now repealed). In the case of *Masagu Ole Naumo vs Principal Magistrate Kajiado Law Courts & Another*, Nairobi, High Court, JR 370 of 2013 (2014) eKLR. In that case, Odunga J held as follows-

*“In my view the view that the Tribunal had no powers to deal with registered land is incorrect. What the Tribunal was prohibited from undertaking is a determination with respect to title to land”.*

The provisions of section 3 (1) of the Land Disputes Tribunal Act No. 18 of 1990 are very clear on what matters these tribunals had jurisdiction over claims of title to registered land is not one of the matters that can or could be laid in this tribunal and the Matungu Land Disputes Tribunal and Western Provincial appeals Committee were wrong to register, hear and pass judgment and make orders against the appellants on the title to the suit land. Having found this there will be no need to go into the merits or demerits of the proceedings in the Tribunal and Committee as they never had jurisdiction in the first place. I find that this appeal has merit and I allow the same. I quash the decision/verdict of the Matungu Land Disputes Tribunal and Western Provincial appeals Committee with no orders as to costs.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 18<sup>TH</sup> DECEMBER 2019.**

**N.A. MATHEKA**

**JUDGE**