



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC APPEAL NO. 3 OF 2017

CHRISTOPHER WAFULA MUTORO.....APPELLANT

VERSUS

RICHARD LORDIA LOKERE.....RESPONDENT

JUDGMENT

BACKGROUND

1. **Richard Lordia Lokere**, the respondent herein lodged a dispute before the Kwanza Land Disputes Tribunal alongside **14** other persons in respect of land title **No Kwanza/Kwanza Block 3/Luhya/52**. The award of the disputes tribunal was in favour of the respondent herein. The award of the tribunal was filed in **Chief Magistrates Land Case No. 9 of 2011** and adopted as the judgment of the court on **8/4/2011**. The appellant being dissatisfied with the decision of the tribunal filed an appeal at the Rift Valley Land Disputes Appeals Committee at Nakuru on **5/5/2011** which appeal was given **serial No. 26/2011**. However the **Land Disputes Tribunal Act No. 18 of 1990** which had granted the Land Disputes Tribunal jurisdiction to hear land disputes specified in **Section 3 (1)** of the Act was repealed by **Section 31** of the **Environment of Land Court Act No. 19 of 2011** which commenced on **30/8/2011**.

2. By a **Miscellaneous No. 23 Of 2015** under **Section 30 of ELC Act** the appellant herein applied to this court for an order that the court do call for and hear and determine the **Appeal No. 26/2011** previously before the Rift Valley Provincial Appeals Tribunal. The court (Obaga J) declined to do so and transferred those proceedings to the Magistrates Court for hearing and determination. The appellant applied for a review of that decision but this court (Obaga J) declined to grant review orders and gave grounds for the refusal. The appellant appealed that decision to the Court of Appeal and Eldoret vide **Civil Appeal No. 71 of 2016** and on the **5/10/2017** the Court of Appeal ordered that the **Land Disputes Appeal Cause No. 26/2011** be registered, heard and determined by this court, hence this appeal which was given the number **Kitale ELC No. 3 of 2017** upon transfer and registration in this court.

The Appellant's Case

3. In an amended Memorandum of Appeal dated **28/3/2018** and filed in court on the same date through B.N. Munialo & Co. Advocates the appellant herein being dissatisfied with the award of Kwanza Land Disputes Tribunal award read and adopted as judgment of the court vide **Kitale CM Land Case No. 9 of 2011** appealed to this court against the whole decision on the following grounds:

- (1) That the Tribunal erred in both law and fact by not considering that the appellant is the owner of plot (sic) and knows all buyers;
- (2) That the Tribunal erred in both in law and fact by entertaining the claim of the respondent who created his own problems by buying from an unknown owner;
- (3) That the Tribunal erred in both law and fact by overstepping their mandate in awarding the claimant the appellant's land without due consideration to land ownership;
- (4) That the Tribunal erred in both law and fact by believing the evidence of the alleged purchaser/claimant that the appellant sold to him six acres;
- (5) That the Tribunal erred in both in law and fact by not considering the several threats of the claimant;
- (6) That the Tribunal erred in not considering some of the buyers that they had not completed paying their money of the lands according to the sale agreements;
- (7) That some of the buyers have invaded the lands without owner's permission;

(8) That the court's (sic) decision is unlawful and therefore cannot be enforced as it would create a breach of peace in the suit land;

(9) That the Tribunal court erred in law by imposing two strangers in the appellant's land as members;

(10) That the Kwanza Land Disputes Tribunal erred in law and fact in handling a matter it had no jurisdiction to hear and determine;

(11) That the award as adopted by the Kitale Chief Magistrate's Court is null and void ab initio and the same should be set aside.

4. The appellant prayed that the elders' award filed in Kitale Court on **10th March, 2011** and adopted as judgment on the **8/4/2011** be set aside and the appeal herein be allowed with costs to the appellant.

5. On **9/7/2019** the court gave directions for the appeal to be canvassed by way of written submissions. The Appellant filed his submissions on **1/8/2019** while the respondent filed his on **15/8/2019**.

6. Ground No. 10 of the memorandum of appeal raises the issue as to whether the Kwanza Lands Disputes Tribunal erred in law and in fact in handling a matter that it had no jurisdiction to hear and determine. Since this issue alone is capable of disposing of this matter this court will deal with it on a preliminary basis before delving into the other issues arising from the grounds in this appeal.

The Appellant's Submission on the Issue of Jurisdiction of the Land Disputes Tribunal

7. Relying on **Mary Mukhonja -vs- Maxwel Burudi, Joseph Kidemuk Kitale ELC Civil Appeal No. 4 of 2018, Asman Maloba Wepukhulu and Another -vs- Francis Wakwabubi Biketi Kisumu CA Civil Appeal No. 157 of 2001** the appellant submitted that the Kwanza Land Disputes Tribunal did not have jurisdiction to handle the dispute as the land is in the category of registered land. The appellant stated that a title deed was produced before the land disputes tribunal during its proceedings, as were the agreements of sale.

8. The respondent on the other hand submitted that the tribunal has jurisdiction to hear the dispute since the proceedings before it were meant to compel the appellant to take the respondent and other buyers to the Land Control Board for "*purposes of issuance of title deeds to their various portions.*" The respondent disputes the applicability of the case of **Mary Mukhonja -vs- Maxwel Burudi, Joseph Kidemuk Kitale ELC Civil Appeal No. 4 of 2018** to this case and states that the facts are not the same because in the **Mary Mukhonja case** the land was not registered in the names of the persons sued at the tribunal or the issue of acreage. It is the respondent's submissions that Kwanza Land Disputes Tribunal exercised its "*discretion*" as mandated and within the law.

9. I have examined the appeal record. At **page 84** of the appeal is a copy of a title deed for **Kwanza/Kwanza Block 3/Luhya/52** measuring **17.05 Ha** issued in the name of Christopher Wafula Mutoro the appellant herein on **15/10/2001**. On **page 75 - 83** of the record of appeal are copies of sale agreements of bearing various dates between **4/4/199, 13/6/2002, 9/7/2008, 3/9/2009, 5/3/2003 and 12/11/2010**. On **page 73 - 74** of the record of appeal are the proceedings before the tribunal in **Kwanza Land Disputes Tribunal Case No. 2 of 2010** dated **15/2/2010** between Richard Lordia Lokere as the complainant and Christopher Wafula Mutoro as the respondent. It is clear the respondent's grievance was that he at first bought 3 acres of land from the appellant and subsequently bought a further 3 acres from a third party who had also bought the land, comprised in **Kwanza/Kwanza Block 3/Luhya/52** from the appellant who was the title holder but the appellant was not willing to transfer the land to the respondent; the appellant had also refused to transfer land to the rest of the buyers.

10. During the proceedings the Kwanza Land Disputes Tribunal chairman is on record as having enquired from the appellant as to whether the respondent and the other buyers were telling the truth whereupon he admitted that he had sold the respondent and his colleagues land but they had refused to meet some conditions such as paying for survey fees, accepting to maintain survey marks as well as building at the spots he desired and had shown them. He also indicated that if the respondent and the other buyers accepted those conditions he would have no objection to transferring the land he sold to each one of them.

11. The chairman is on record as having asked the buyers whether they would agree to pay survey fees and appear before the land control board and they agreed, whereupon the appellant undertook to take the buyers to the land control board on **22/2/2011**. The tribunal ordered the parties to go through the Land Control Board and to get the District Surveyor to confirm that each buyer legally got a plot number to enable them receive individual title deeds for their respective portions. In the same ruling the District Surveyor was ordered to not to allow the previous surveyor to repeat the survey work since the appellant was uncomfortable with his relationship with some of the buyers. That is the structure of the decision that the appellant is appealing against.

12. The most noteworthy feature of the tribunal award analysed above is that all the parties were in agreement on the issues arising. In brief, the appellant agreed that he had sold land to the buyers and the buyers agreed to comply with the terms set out by the appellant at the hearing. Does this decision qualify as one should be quashed by this court for the reason that the land was registered?

13. The provisions of **Section 3 (1)** of the **Land Disputes Tribunal Act No. 18 of 1990** (now repealed) provided as follows:

(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.”

14. It is clear from the said Act that the jurisdiction of the Land Disputes Tribunals was restricted to division or boundaries to land and trespass on land, the claim to occupy or to work on land.
15. Having regard to the provisions of **Section 3(1)** of the Act, was what the tribunal dealt with at the proceedings held on **15/2/2010** in excess of the jurisdiction of the tribunal?
16. The grievance that was placed before the tribunal was that though the appellant had sold land, he had refused to transfer to the buyers their respective portions that they paid for; in my view this does not fall within the description of trespass to land, right to work on land or boundaries to land. It is generally clear that the respondent and his colleagues were seeking a means of compelling the appellant to transfer the purchased portions to them. This is confirmed in the respondent’s submission when he states as follows:
- “The respondent was the claimant in the Kwanza Land Disputes Tribunal who had been appointed by his co-purchasers to champion their claim against the appellant herein for purposes of compelling the appellant to give them title deed to their respective portions out of title No. Kwanza/Kwanza Block 3/Luhya/52.”**
17. It is admitted that the land subject matter of the dispute before the tribunal was registered land, title having been issued under the **Registered Land Act Cap 300**, now repealed.
18. Numerous decisions have been issued by the courts nullifying proceedings and awards of Land Disputes Tribunals where they had purported to handle disputes involving registered land. An example of such a decision is **Mary Mukhonja -vs- Maxwell Burudi and Joseph Kidemuk Kitale ELC Civil Appeal No. 4 of 2018**. Another example is **Asman Maloba Wepukhulu and Another -vs- Francis Wakwabubi Biketi Kisumu CA Civil Appeal No. 157 of 2001**
19. It appears that though the principle embodied in the latin maxim *“ubi jus ibi remedium”* is that no wrong should be without a remedy in law, a litigant must take his claim to the forum that is properly possessed of jurisdiction, for without jurisdiction no authority court or tribunal is able to move even one step forward.
20. The words of the court in the case of **Owners of the Motor Vessel “Lillian S” v Caltex Oil (Kenya) Ltd [1989] KLR 1** come to mind. In that case Nyarangi J.A. held as follows
- “I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide the issue right away on the material before it. 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. Before I part with this aspect of the appeal, I refer to the following passage which will show that what I have already said is consistent with authority:**
- “By jurisdiction is meant the authority which a court as to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision. The limits of this authority are imposed by the statute, charter, or commission under which the court is constituted, and may be extended or restricted by the like means. If no restriction or limit is imposed the jurisdiction is said to be unlimited. A limitation may be either as to the kind and nature of the actions and matters of which the particular court has cognisance, or as to the area over which the jurisdiction shall extend, or it may partake of both these characteristics. If the jurisdiction of an inferior court or tribunal (including an arbitrator) depends on the existence of a particular state of facts, the court or tribunal must inquire into the existence of the facts in order to decide whether it has jurisdiction; but, except where the court or tribunal has been given power to determine conclusively whether the facts exist. Where a court takes it upon itself to exercise a jurisdiction which it does not possess, its decision amounts to nothing. Jurisdiction must be acquired before judgement is given”**
21. Having regard to the past court decisions and the statutory provisions set out hereinabove, it is without doubt that the Kwanza Land Disputes Tribunal did not have jurisdiction to determine the claim before it which was within the mandate of the Environment and Land Court.
22. It is not without much sympathy for the plight of the respondents and the other buyers that the court arrives at the judgment herein, but it is the proper position in law that a tribunal can only do that which is mandated to do, and that the tribunal erred in handling the dispute before it.
23. The upshot of the foregoing is that this appeal succeeds. As the issue of jurisdiction is capable of disposing of the entire appeal this court does not need to delve into the other issues arising in the appeal.
24. Consequently, the elders’ award filed in **Kitale CMC Land Case No. 9 of 2011** and all consequential orders are hereby set aside. However each party shall bear its own costs.

Dated, signed and delivered at Kitale on this 4th day of December, 2019

MWANGI NJOROGE

JUDGE

4/12/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Ngeywa holding brief for Munialo for the Applicants

Respondent in person present

COURT

Judgment delivered in open court at 2.35 p.m.

MWANGI NJOROGE

JUDGE

4/12/2019.