



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. APPEAL NO. 135 OF 2011

MWAMBU MBUVI MAINGI.....APPELLANT

VERSUS

KAVITHE KIMANZIRESPONDENT

(An Appeal from the Judgment of the Chairman Eastern Province Land Disputes Appeals Committee Case No. 39 of 1999 Embu dated 20th July, 2011)

JUDGMENT

1. This Judgment is in respect to the decision of the Chairman of the then Eastern Province Land Disputes Appeals Committee in which the Appellants Appeal was dismissed.
2. In its finding, the Appeals Committee held as follows:
 - “i. Respondent won the land dispute case in Kitui District Land Tribunal in (sic) 9th July, 1999.***
 - ii. The case was heard (sic) after ten (10) years in the year 2009 in the Principal Magistrate in Kitui.***
 - iii. The Respondent took the appeal in the Land Tribunal on 13th July, 1999 - Appeal dismissed. Sixty (60) days Right of Appeal.”***
3. The Appellant has challenged the decision of the Appeals Committee on two grounds: that the Chairman erred by not setting aside the decision of the Churuni District Land Disputes which awarded to the Interested Party parcel of land known as Kisasi/Kimuuni/498 and that the Appeals Committee erred when it held that the Appellant had no *locus standi*.
4. The Appeal proceeded by way of written submissions.
5. The Appellant’s advocate submitted that the Churuni District Land Disputes Tribunal lacked jurisdiction to hear the matter because it pertained to a titled parcel of land and that the actions of the District Land Disputes Tribunal and the Appeals Committee were a nullity.
6. The Appellant’s counsel relied on several authorities which I have considered. The Respondent neither filed his submissions nor authorities.
7. In the proceedings before the Churuni Division Land Dispute Case No. 04 of 1999, the Respondent herein informed the court that despite not selling to the Appellant the suit land, the Appellant had the land surveyed by the demarcation officer during the adjudication process; that the suit land was then registered in favour of the Appellant as parcel number 498 and that the Appellant has been using his land since 1984.
8. On the other hand, the Appellant informed the Tribunal that he purchased the land in 1973 for Kshs. 9,200 and that during the adjudication process, the Respondent lodged an objection being objection Case No. 65 of 1988.
9. After the objection was heard, the Appellant informed the Tribunal that the same was dismissed.
10. In its Award, the Tribunal found that the Appellant was using the suit land unlawfully and directed the Kitui Land Adjudication Officer to register parcel number 498 in the name of the Plaintiff or her daughter (*the Respondent herein*).
11. The Appellant herein then filed an Appeal with the Appeals Committee challenging the jurisdiction of the Tribunal, amongst other

grounds.

12. Without addressing the issues raised in the Appeal, the Appeals Committee dismissed the Appellant's Appeal.

13. It is not in dispute that by the time the Respondent's mother filed Land Dispute No. LDT 04/99, the suit property had been adjudicated in favour of the Appellant and registered as parcel number 498.

14. Indeed, the evidence that was placed before the Tribunal showed that an objection was raised during the adjudication process in respect of the ownership of the suit land, which was decided in favour of the Appellant. Neither the Respondent nor her mother lodged any appeal with either the Land Adjudication Officer or the Minister as provided for under the Land Adjudication Act.

15. Considering that the suit land had been registered in favour of the Appellant during the adjudication process, the District Land Disputes Tribunal did not have the requisite jurisdiction to handle the dispute.

16. I say so because under Section 3(1) of the Land Disputes Tribunal Act (*repealed*), the Tribunal could only handle disputes relating to: division of, or the determination of boundary to land, including land held in common; a claim to occupy a work on land or trespass to land.

17. The issue of ownership to land could only have been dealt by the court as provided for under Section 159 of the Registered Land Act (*repealed*).

18. In the circumstances, the District Land Disputes Tribunal did not have the jurisdiction to hear the dispute and the Appeals Committee should have set aside the said decision.

19. For those reasons, I allow the Appellant's Appeal in the following terms:

a. This Appeal be and is hereby allowed and the Awards of Churuni Division Land Dispute No. LDT 04/99 and Eastern Land Disputes Appeals Committee Case No. 39/99 are hereby declared nullities ab initio.

b. All orders issued by the Churuni Division Land Dispute Tribunal Case No. 4 of 1999 and Embu Land Disputes Appeals Committee Case No. 39 of 1999 are hereby set aside.

c. An order be and is hereby issued that the Title Deed to parcel of land known as Kasasi/Kamuuni/498 issued to the Interested Party be cancelled and the register be rectified to reflect the Appellant's name.

d. Each party to bear his/her own costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF MARCH, 2018.

O.A. ANGOTE

JUDGE