



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

CIVIL APPEAL NO. 7 OF 2014

JANEFRA NCIS AYUMA ANALO.....APPELLANT

VERSUS

AINEA OKOTI OLAKA.....1ST RESPONDENT

ROSEMARY SENJE MAKOKHA.....2ND RESPONDENT

ABABU MAKONGE.....3RD RESPONDENT

JAMES MZEE MATANGA.....4TH RESPONDENT

ABRAHAM MATO MUTHAMI.....5TH RESPONDENT

JUDGEMENT

The appellant being dissatisfied with the decision of the Western Provincial Appeals Committee case No. 11 of 2010 read to the parties on 9.3.2011 now appeals to this court against the whole decision based on the following grounds:-

1. The Western Provincial Appeals Committee erred in law in upholding the decision of Kakamega Municipality Land Dispute Tribunal whose decision dwelt on matters based on contract.
2. The Western Provincial Appeals Committee erred in law in upholding a decision reached by Kakamega Municipality Land Disputes Tribunal case No. 8 of 2010 which acted in excess of its jurisdiction.
3. The Western Provincial Appeals Committee erred in law in upholding the decision of the Kakamega Municipality Land Disputes Tribunal case No. 8 of 2010 ordering to cancel and surrender it to Benjamin Kenyau Land parcel Butsotso/Shikoti/2237 registered in the appellants' names and yet the tribunal did not have such powers of cancelling registered title to land.
4. The Western provincial Appeals Committee erred in law in upholding the decision of the Kakamega Municipality Land Disputes Tribunal and award the appellant costs of the appeal.

The appellant raises 4 grounds of appeal as set out in the memorandum of appeal dated 28.4.2011. The appellant is the registered proprietor of land parcel Butsotso/Shikoti/2237 which she inherited from her late husband Robert AnaloMakatiani who had originally purchased a portion out of original land parcel Butsotso/Shikoti/308 which was sub divided giving rise to land parcels Butsotso/Shikoti/2237, 2238 and 2239. The appellant therefore upon the death of her late husband filled succession and obtained grant and certificate of confirmed grant in respect of land parcel Butsotso/Shikoti/2237 which she is now registered as the proprietor. It is the appellant's case that, the appellant was the registered proprietor of land parcel Butsotso/Shikoti/2237 and both tribunals ordered to be sub-divided after hearing the case.

The provincial appeals committee erred in upholding the decision of the Kakamega Municipality Land Dispute Tribunal whose decision dwelt on matters based on contract. The jurisdiction of the then Land Disputes Tribunal was limited as was provided under Section 3 of the Land Dispute Act. The powers of the tribunal were limited to determining land dispute as to

- (a) "The decision 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".

And by so doing, the tribunals both at the provincial and divisional level directed that the appellant title land parcel Butsotso/Shikoti/2237 be cancelled and be sub divided into various portions of the parties herein. By so doing the tribunals acted in excess of their jurisdiction to make such orders.

The appellant during the hearing at the Kakamega Municipality Land Dispute Tribunal in her evidence which is at page 26 of the record of appeal told the court her late husband bought ½ acre of land in 1978 from one Matanga Shibembe and produced an agreement dated 24.8.1978. The land was allocated the number as Butsotso/Shikoti/2237 measuring 0.41 Ha (1.12 acres) instead of 0.5 acres (0.2 Ha). Land sale agreements, are contracts entered between the parties. Each of the claimants herein in their evidence alleges to have purchased their respective portions and were referring to land sale agreements. The tribunal therefore acted in excess of their jurisdiction contrary to their powers donated by Section 3 of the land Dispute Act (Repealed) and conferred themselves with powers outside their ambit to deliberate on contractual obligations.

On ground 3 by ordering that the appellant surrenders a piece of land measuring 109 x 59 x 113 x 65 ft to Benjamin Kenyau, the tribunal was indirectly the mutilation and cancellation of the appellants' title in land parcel Butsotso/Shikoti/2237 when in essence they had no jurisdiction to make such orders.

Ground 4, the provincial appeals tribunals erred in law and fact in upholding a decision of the Kakamega Municipality Divisional Land Dispute Tribunal whose decision was illegal and void ab initio as the said decision was based on the wrong footing and made out of jurisdiction.

The respondents submitted that, this is an appeal arising from the decision of the then Western Provincial Appeal Committee Appeal No. 111 of 2010 which arose from Tribunal Case No. 8 of 2010. The respondents' claim at the tribunal was brought under the Land Disputes Tribunal Act No. 18 of 1990. It is their submissions that the Land Disputes Tribunal properly had jurisdiction to determine the dispute before it. The respondents claim was the division of and to occupy and/or work land as set out under Section 3 of the land Disputes Tribunal. The tribunal proceeded to order for the division of the appellant's land parcel No. Butsotso/Shikoti/2237 so that the respondents get their respective portion (see verdict at page 35 of the record of appeal). At page 17 of the record of appeal, the tribunal set out the nature of the claim as working/occupation of disputed land. This falls within the jurisdiction of the tribunal.

The appellant's claim was that the tribunal lacked jurisdiction and that the claim was based on contract is false. There was no privy contract between the appellant and the respondents. Consequently grounds 1 and 2 of the memorandum of appeal cannot stand. The appellant's statement at the Land Disputes Tribunal is found at page 26 of the record of appeal here she admits that indeed she is entitled to 0.5 acres of land not 0.41 Ha. She stated that all she needed was ½ acre of land. The disputed land parcel No. Butsotso/Shikoti/2237 is 1.12 acres. It was proper for the tribunal to order for the sub division of this land so that the one over and above ½ acre goes to the claimants who are the respondents. The tribunal properly ordered that the appellant could retain the ½ acre of land which she inherited from her husband. There is nowhere in the proceedings to indicate that the tribunal acted illegally or exceeded its jurisdiction. The appeals committee therefore acted within its mandate as set out under Section 8 of the Land Disputes Tribunal. It was a finding of fact that the appellant held more land than she is entitled to. That the excess land belonged to the respondents.

The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court (Section 8 of the Repealed Land Disputes Tribunal Act No. 8 of 1990). The appeal only lies against the decision of the Appeals Committee on a point of law. There is no point of law that emerged during the proceedings that warranted the filing of this appeal (Section 8 Sub-section 9 of the Land Disputes Tribunal Act No. 8 of 1990).

On ground 1 to 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 tribunals 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 appellant. In our view, the Tribunal acted in excess of its jurisdiction.”

The tribunals in the present case dealt with title to property. It found that the claimant was entitled to the title of the land registered in the name of Jane Francis Ayuma Onalo. The tribunal ordered that the objector Jane Makatiani, to surrender the piece of land that led to this dispute i.e the empty space measuring 109 x 59 x 113 x 65 ft to landless Benjamin Kenyau. Kenyau should not be rendered landless for faults resulting from Makatiani's fraud. The objector to retain the portion that her husband purchased from Mukolwe and get a number for it. All the claimants in this dispute should foot the costs of survey for the above mentioned sub division. The dispute between the parties before the Kakamega Municipality Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Committee was essentially a claim to title over the land. From perusal of the record of appeal the facts of the case are that sometime in 2010, the respondents herein filed a claim at Kakamega Municipality Land Dispute Tribunal vide Tribunal case No. 8 of 2010 against the appellant (as the objector) claiming land parcel

Butsotso/Shikoti/2237. The case was heard at the Tribunal as per the proceedings on the record of appeal starting from page 17 to page 36. The tribunal made its verdict found on page 35 and 36 of the record of appeal as follows:-

VERDICT

“Because of the foregoing in the background information, site visitation and summary issues, this tribunal decides as follows:-

- a) All the claimants in this dispute to get parcel numbers for the plots that they purchased, according to the measurements and boundaries specified in their sale agreements, except for Abraham, whose right is as indicated below(b)*
- b) Abraham Mato Mutsami to get a number for a piece of land, less the portion claimed by Hababu Makonge, which is 106 x 56 ft, as per the survey sketch map presented to this tribunal.*
- c) The 106 by 56ft claimed by Makonge is therefore awarded to him.*
- d) The objector Jane Makatiani, to surrender the piece of land that led to this dispute, i.e. the empty space measuring 109 x 59 x 113 x 65 ft to landless Benjamin Kenyau. Kenyau should not be rendered landless for faults resulting from Makatiani’s fraud.*
- e) The objector to retain the portion that her husband purchased from Mukolwe and get a number for it.*
- f) All the claimants in this dispute should foot the costs of survey for the above mentioned sub division.*

The appellant herein being dissatisfied with the above verdict appealed to the Provincial Appeals Committee within 30 days as was provided under the then now (Repealed) Land Dispute Act Cap 303A. The appellant appealed vide Kakamega Provincial Appeals Committee Tribunal case No. 111 of 2010 as shown on page 2 of the record of appeal. The said appeal was dismissed and the Provincial Appeals Committee Tribunal upheld the Divisional Land Dispute Tribunal.

The verdict of the Appeal tribunal is found on page 3 of the record of appeal herein which reads as follows:-

VERDICT

In view of the observations above, we rule and order that:

- 1. The Lurambi Land Dispute Tribunal court ruling stands as ordered.*
- 2. Costs to costs*
- 3. Parties to keep peace during the implementation of the above order.*

The appeals tribunal court meant in number one above “The Kakamega Municipality Land Dispute Tribunal court ruling stands as ordered” and not Lurambi Land Dispute Tribunal Court. The appellant being dissatisfied with the said verdict lodged this appeal in the circumstance.

For those reasons, I find that the proceedings and decision fell well outside the jurisdiction of the Kakamega Municipality Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Committee. The proceedings prima facie violated the Land Disputes Tribunal Act (now repealed). In the case of **Masagu Ole Naumo v 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 these tribunals and the Kakamega Municipality Tribunal was wrong to register and hear pass judgment and make orders on the respondents claim for the title to the suit land. Again, the Provincial Land Disputes Appeals Committee was wrong in upholding the tribunal’s verdict as the tribunal had no jurisdiction to hear or pass judgment on a claim of title to land. I find that this appeal has merit and I allow the same. I quash the decision/verdict of the Kakamega Municipality Land Disputes Tribunal and the Western Provincial Land Disputes Appeals Committee with costs to the appellant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 15TH DAY OF MAY 2018.

N.A. MATHEKA

JUDGE