



**Kaubuteni v Mwambia & another (Environment and Land Appeal 40 of 2009) [2018] KEELC 4908 (KLR) (28 June 2018) (Judgment)**

*Margaret Kaubuteni v George Kiruki Mwambia & another [2018] eKLR*

Neutral citation: [2018] KEELC 4908 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL 40 OF 2009**

**JG KEMEL, J**

**JUNE 28, 2018**

**BETWEEN**

**MARGARET KAUBUTENI ..... APPELLANT**

**AND**

**GEORGE KIRUKI MWAMBIA ..... 1<sup>ST</sup> RESPONDENT**

**M'MUKETHA M'MUNGANIA ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. This appeal arises from decision of the Eastern Province Land Disputes Appeals Committee in their Appeal in Eastern Provincial Land Dispute Tribunal Appeal (PLDTA) No 61 of 2005 read to the parties by the Court on 30/3/2009.
2. The award/decision of the Provincial Land Tribunal Disputes was as follow;  

“That the appeal is dismissed. This tribunal concurs with the Meru Central LDT award.”.
3. Aggrieved by the said decision the Appellant filed a memorandum of appeal and set out the following grounds;
  - a) The Eastern Land Disputes Appeals Committee erred on a point of law in not allowing the Appeal before it as both the Tribunal and the Appeals Committee had no jurisdiction to deal with the matter of ownership of Land.
  - b) The Eastern Land Disputes Appeals Committee erred on a point of Law in that it refused to allow the Appeal although it was clear that the Respondent’s claim was time-barred.



- c) The decision of the Land Disputes Appeals Committee is bad in Law as the same is against the provisions of the Land Disputes Tribunal’s Act.
  - d) The Eastern Provincial Land Disputes Appeals Committee erred in Law in not finding that the decision of the Tribunal was in excess of its jurisdiction under the Land Disputes Tribunals Act.
4. On 26/2/18 the 2<sup>nd</sup> Respondent, was substituted by Evangeline Kananu Muketha as the legal representative of the 2<sup>nd</sup> Respondent who is deceased.
  5. On 12/3/18 the parties agreed to canvas the appeal by way of written submissions. The Court directed them to file the submissions by 30/4/18.
  6. This is a second appeal and pursuant to section 8 of Land Dispute Tribunal Act my role is to determine the appeal on matters of law only.
  7. Having evaluated the LDT proceedings, the decision made therein at the Meru Central LDT and Eastern Province Appeals Committee, the submissions submitted by the parties, the following are the issues for determination;-
    - A. Whether the Provincial LDT appeals had jurisdiction to determine the matter at the appeals committee.
    - B. Costs.
  8. Jurisdiction of a Court or a tribunal flows from *the constitution* and/or legislation. It cannot be conferred by a party nor can a Court or tribunal confer jurisdiction upon itself.
  9. According to Section 3(1) (b) of the LDT the tribunal had powers to deal with the following ;
    - “ 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;”
  10. The issue for determination at the LDT was actually ownership but couched like a trespass which it is not. In view of the provisions of the Act aforesaid the LDT did not possess jurisdiction to deal with the issue of ownership. Likewise, the Appeals Committee also did not have jurisdiction to so determine the matter.
  11. In view of the above finding it would be unnecessary to determine the other issues raised in the Memorandum of Appeal.
  12. In the end the appeal is allowed and the Respondents are condemned to pay costs of the appeal.

Orders accordingly

**DELIVERED, DATED AND SIGNED AT MERU THIS 28<sup>TH</sup> JUNE, 2018.**

**J G KEMEI**



## **JUDGE**

In the presence of:

C/A Mutua

Muchiri for Appellant

Kimathi Kihara for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

