



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 70 OF 2007

PATRICK NJAGI NJERU.....APPELLANT

VERSUS

PETER NJAGI NJABARAGU.....RESPONDENT

JUDGMENT

The Appellant's Case

1. The appellant filed a memorandum of appeal on the 5th July 2007 seeking that the award of the respondent in **Land Disputes Tribunal Case Number 13 of 2005** be set aside with costs to the appellant. At this juncture I find it fit to correct the appellant and point out that the decision that he is appealing against is supposed to be referred to as the **Eastern Province Land Disputes Appeals Committee case number 13 of 2005**.
2. The grounds upon which the appeal herein is brought are that the Tribunal (read the Committee) erred in purporting to hear the dispute while it had no jurisdiction to hear the same as it involves land registered under the **Registered Land Act Cap 300** (now repealed).
3. This appeal was disposed of by way of written submissions. The appellant filed his on 28/4/2016 while the respondent had filed theirs on 14/10/2014.
4. In his submissions the appellant relied on the provisions of **Section 159** of the **Registered Land Act Cap 300** now repealed which states that

“...159. Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration, shall be tried by the High Court and, where the value of the subject matters in dispute does not exceed twenty five thousand pounds, by the Resident Magistrate's Court, or, where the dispute comes within the provisions of section 3 (1) of the Land Disputes Tribunals Act in accordance with that Act.”

5. He submits that the jurisdiction is the first factor to be considered in any case as the court's ability to proceed with any case depends on the findings regarding jurisdiction. He relied on the case of **Boniface Waweru Mbiyu Vs Mary Njeri 2015 eKLR** as well as the renowned case of **Owners of the Motor Vessel Lillian S. vs Caltex Oil K Ltd 1989 KLR** for that proposition.
6. The respondent on the other hand raised several issues for determination in his submissions which are as follows:
 - a. **Whether the Eastern Province Land Disputes Tribunal had the jurisdiction to entertain and determine LDT no 13 of 2005.**
 - b. **Whether the decision of the eastern province land disputes Tribunal was fair just and equitable;**
 - c. **Whether failure to challenge the magistrates decision in land disputes Tribunal case number 15 of 2005 renders the appellant's case a nullity;**
 - d. **Whether the appeal is the proper forum to pursue.**

Determination

7. This court is not inclined to delve into all the issues raised by the respondent as the record of appeal in the instant appeal only focuses regard to the jurisdiction of the Appeals Committee.

8. However, before I delve into the issue of jurisdiction on which the entire appeal is based I wish to discuss only the fourth issue raised by the respondent in his submissions, that is, whether an appeal is the proper recourse for the appellant in a dispute of this nature.
9. On that issue the respondent's submission is as follows: that in an appeal the major consideration is the merits of the case. He avers that the appellant deserts the theme of an appeal midway and proceeds to challenge the decision making process that is in the purview of judicial review thus advancing a "*mixed grill of some sort*" and that the same is not sustainable.
10. **Section 8(8)** of the **Land Disputes Tribunals Act** provides that the decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court. That section has a proviso that states that no appeal shall be admitted to hearing by the High court unless a judge of that court has certified that an issue of law (other than customary law) is involved.
11. **Section 8(9)** of the Act provides that either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within 60 days of the decision complained of.
12. As is seen from the provisions of that Act which has now been repealed, an appeal from a Provincial Land Disputes Appeals Committee used to be lodged in the High Court. Since its establishment, this court is now the right forum now to determine such appeals.
13. Secondly appeals on issues of fact were expressly barred and issues of customary law were deemed to be issues of fact.
14. The substantive issue at hand in this appeal is not an issue of fact and neither is it an issue of customary law; rather, it is the issue of jurisdiction of the Committee to handle the appeal before it. I therefore find, subject to the other findings I will make herein below, that this appeal is the proper forum to ventilate the appellant's discontent with the decisions in the quasi-judicial bodies below.
15. That means that the only issue that this court has to determine in this appeal is the issue of jurisdiction of the Eastern Province Land Disputes Appeals Committee.
16. The appellant pegs the issue of jurisdiction on whether the land was registered or not. He avers that the fact that the land was registered divested the Committee and hence the Tribunal of jurisdiction.
17. There is also no evidence that the issue of jurisdiction of the Tribunal or of the Appeals Committee was ever considered.
18. From the scanty proceedings of the Appeals Committee which are exhibited as part of the record of appeal there is no way of knowing that the land was registered from the record of appeal. The appellant has failed to compile a proper record of appeal that brings all details to the court's attention in a proper manner.
19. However, I do note that it is not disputed that the suit land is registered land and I have looked at the response filed by the respondent by way of an affidavit dated **1/12/2008**, which is in essence not a response to the appeal but to the motion by the appellant dated **4/11/2007** seeking a stay of eviction from the suit land. It shows that the lands comprised in **Abogeta/Upper Kithangari 919** and **920** were registered land as at the year 1987. Therefore I conclude that the land was registered land as at the time of the decisions of the **Meru Central District Land Disputes Tribunal** and the appellate decision of the **Eastern Province Land Disputes Appeals Committee**.
20. The effect of the Tribunal decision was that each of the parties to the appeal should continue keeping his share of the land and that the land in **Abogeta/Upper Kithangari 920** should remain as it was. The Eastern Provincial Appeals Committee upheld the decision of the Tribunal and dismissed the appeal. None of the two parties got or lost anything out of those two sets of proceedings. It can be safely presumed that the only loss was the resources that they expended thereon.
21. This is a strange appeal in which the respondent did not appeal on the basis of Jurisdiction as the appellant does now, and in which the appellant brought proceedings before the very Tribunal which now, in this appeal, he alleges did not have jurisdiction; It is also an appeal in which the decision of this court either allowing the appeal or dismissing it will leave the parties in the same position as they were in the first place before the Tribunal proceedings were filed.
22. To be precise, if this court granted this appeal for any reason, the decisions of the Appeals Committee and the Tribunal would be quashed leaving the parties exactly in the same situation they were in before the commencement of the Tribunal proceedings. On the other hand perchance this court were to dismiss the appeal on any ground, the decision of the Appeals Committee and the Tribunal which would be left in place would ensure that the parties remain in the same situation that obtained before the Tribunal proceedings were commenced.
23. The appellant appears to have believed that the Tribunal had jurisdiction and hence taken the matter before it for determination, but now he has had a change of heart. The issue of jurisdiction was not raised at all in the Eastern Province Land Disputes Appeals Committee. It is being raised for the first time in these proceedings. It may be well that the two bodies may have lacked jurisdiction but apparently, the appellant voluntarily went before them and developed a sense of acquiescence till he could not tolerate their decisions any more hence this appeal.
24. Upon a comprehensive review of this matter I do not find any benefit that any of the parties can derive from this appeal for the reasons that I have stated hereinabove. It is a mere academic exercise. I therefore dismiss it with costs to the respondent.

Dated and signed at Kitale this 15th day of June, 2018.

MWANGI NJOROGE

JUDGE

ENVIRONMENT AND LAND COURT, KITALE

Delivered in open court at Meru on this 28th day of June, 2018 in absence of the parties who had been notified of the date.

MWANGI NJOROGE

JUDGE

ENVIRONMENT AND LAND COURT, KITALE

In presence of:

C/A Janet/Galgalo

N/A for the parties