



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC APPEAL NO. 74 OF 2017

DAVID FARI ICHECHI.....APPELLANT

VERSUS

JONES INDOSHI ICHECHI.....RESPONDENT

JUDGEMENT

The appellant being dissatisfied with the decision of the Lugariland disputes tribunal adopted in court on 18th November 2010 hereby appeal against the said decision on following grounds:-

1. That the Land Disputes Tribunal erred in not considering the decision on the basis of the evidence on record.
2. That the Land Disputes Tribunal erred in law by not addressing the issue whether or not the matter in dispute fell within the jurisdiction of the Land Disputes Tribunal.
3. That the Land Disputes Tribunal erred in law and fact in arbitrating and/or entertaining the matter before it when it had no jurisdiction.
4. That the Land Disputes Tribunal erred in law and fact in failing to appreciate that the appellant as the owner of parcel land No. KAKAMEGA/MOI'S BRIGDE BLOCK 1/NZOIA SISAL/2866 had indefeasible right over the same and as such had no authority to order any subdivision of his land and allocate the same to the respondent.
5. The decision of the Land Disputes Tribunal adopted by the honourable Court on the 18th November 2010 is illegal, biased and has occasioned a miscarriage of justice.

The appellant prays as follows:-

1. That the decision of the Lugari Land Disputes Tribunal adopted by the Honorable Court on 18th November 2010 be set aside.
2. Costs of this appeal be awarded to the appellant.

This court has carefully considered the appellant's submissions. The respondent was served but failed to file any papers in opposition. This appeal is premised upon the memorandum of appeal dated 2nd September, 2015 which raises five grounds, the preliminary issue in my view which is for determination is the jurisdiction of this tribunal. On ground 2 and 3 of the appeal, the operative law was the Land Disputes Tribunal Act (now repealed).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 tribunal meandered beyond its boundaries. In **M'Marete v Republic & 3 others, Court of Appeal, Nyeri, Civil Appeal**

“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 tribunal in the present case dealt with title or ownership to property. The Lugari Land Disputes Tribunal verdict which ordered for revocation of title No.KAKAMEGA/MOI'S BRIGDE BLOCK 1/NZOIA SISAL/2866.The dispute between the parties before the Lugari Land Disputes Tribunal was essentially a claim to ownership over the land. The decision of the the Lugari Land Disputes Tribunal held inter alia that;

“That the District Land Registrar to cancel the current parcel No KAKAMEGA/MOI'S BRIGDE BLOCK 1/NZOIA SISAL/2866 comprising 1.5 Acres and issue a new one comprising 1.2 Acres to the objector.”

For those reasons, I find that the proceedings and decision fell well outside the jurisdiction of the Lugari Land Disputes Tribunal. 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 this tribunal and the Lugari Land Disputes Tribunal was wrong to register, hear and pass judgment and make orders against the appellants on the title to the suit land. Having found this there will be no need to go into the merits or demerits of the proceedings in the tribunal as they never had jurisdiction in the first place. I find that this appeal has merit and I allow the same. I quash the decision/verdict of theLugari Land Disputes Tribunal as adopted by the Honorable Court and with no orders as to costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 26TH DAY OF JULY 2018.

N.A. MATHEKA

JUDGE