



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CIVIL APPEAL CASE NO. 126 OF 2017

FORMERLY MERU ELC CIVIL APPEAL CASE NO. 87 OF 2009

SEBASTIAN KIREU MUNGA'ATIA.....APPELLANT

VERSUS

ROBERT KIBUGI.....1ST RESPONDENT

PROVINCIAL LAND DISPUTE

APPEALS COMMITTEE EMBU.....2ND RESPONDENT

JUDGMENT

1. The Memorandum of Appeal in this appeal is in the following form:

MEMORANDUM OF APPEAL

The Appellant being aggrieved by the ward of the Provincial Land Appeal (sic) Committee as read in court vide Chuka PMCC LDT NO. 15 OF 2008 on 17.6.2009 appeals to the High Court and sets herebelow the following grounds of appeal.

1. That the Provincial Land Disputes Appeal (sic) Committee erred in law in entertaining a dispute which it has no capacity in law to adjudicate upon.
2. That the Provincial Land Disputes Appeal (sic) Committee erred in law in affirming the award of the Meru South Land Dispute Tribunal which clearly was ultra vires.
3. That the Provincial Land Dispute Appeal (sic) Committee erred in law by refusing to interfere with the award of the Land Disputes Tribunal as the same had no jurisdiction to determine / and or entertain a dispute of such nature.

DATED AT MERU THIS 4TH DAY OF AUGUST, 2009

FOR: MUIA MWANZIA & CO.

ADVOCATES FOR THE APPELLANT

2. The appeal was canvassed by way of written submissions.
3. The written submissions filed by the appellant are in the following form:

APPELLANT'S SUBMISSIONS

ON PLEADINGS

My lord, before you is a Memorandum of Appeal dated 4.8.2009 by the appellant forming prayed 3 of the Record of Appeal.

The appellant sets forth 3 grounds as follows;

1. That the Provincial Land Disputes Appeal (sic) Committee erred in law in entertaining a dispute which it had no capacity in law to adjudicate upon.
2. That the Provincial Land Disputes Appeal (sic) Committee erred in law in affirming the award of the Meru South Land Dispute Tribunal which clearly was ultra vires.
3. That the Provincial Land Disputes Appeal (sic) Committee erred in law by refusing to interfere with the award of the Land Dispute Tribunal as the same had no jurisdiction to determine and / or entertain a dispute of such nature.

JURISDICTION

My lord, jurisdiction is everything in a court of law. If an ampire (sic) does not have jurisdiction then it cannot comment or issue a finding touching on the merit of a particular Act or omission in a set of facts before it.

In this case the award of the Land Dispute (sic) Tribunal of **1.8.2008** was without jurisdiction. It follows therefore the Provincial Land Dispute Appeal Committee at Embu should have set aside the said award. Instead it dismissed the appeal on **21.10.2008**.

Your lordship, I submit that when the Land Dispute (sic) Tribunal stated as follows, ***“The case has been overtaken by events. Therefore by the virtue of section 143 of the Registration Land Act (Cap 300) the title cannot be impugned even for fraud or mistake being the first registration.”***

The disputes tribunal my lord had no jurisdiction to comment on the propriety or otherwise of the title. It had no jurisdiction to decide that the title was a first registration.

My lord once the tribunal found that the land is registered then it had to down its tools and rule that it had no jurisdiction instead of giving credence to the title. On that score I rely on the case of the ***MV LILIAN S [1989] KLR*** where the judge held, ***“A court of law down (sic) tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”***

I also rely on the case of ***Republic – versus – Bahari Land Disputes Tribunal & 2 Others [2007] eKLR*** (sic) the court found that the Tribunal lacked jurisdiction and declared its orders null and void.

In the case of ***REPUBLIC –VERSUS – LAND DISPUTES TRIBUNAL (LIMURU DIVISION) & 2 OTHERS EX-PARTE ALICE NYAKIO NJENGA [2014] eKLR*** the court went on to quash the decision of the tribunal for want of jurisdiction.

Allow the appeal and make a finding in the foregoing.

DATED AT MERU THIS 9TH DAY F APRIL, 2018

FOR: M/S MUIA MWANZIA & CO.

ADVOCATES: FOR THE APPELLANT

4. The written submissions filed by the 1st Respondent are in the following form:

1ST RESPONDENT’S WRITTEN SUBMISSIONS

A. SHORT HISTORY OF THE MATTER

My Lord it is clear from the Record of Appeal that the Appellant filed a claim before the Land Disputes Tribunal Chuka Division. The Dispute was registered as CKA/07/07.

The Land Disputes Tribunal heard the parties and made findings that the land was demarcated and registered 33 years before the dispute was taken to them.

The decision of the Tribunal was that the case had been overtaken by event. Land was registered under the Registered Land Act, Cap. 300 Laws of Kenya and the Title could not be challenged before them. They rejected the Appellant’s case.

The Appellant was not satisfied and moved to the Provincial Land Disputes Appeals Committee at Embu.

The Appeal was registered as No. 5 of 2008.

The Committee made its decision on 21st October, 2008 after finding the following:

- a) That Land in question has a Title Deed
- b) That the Land in Dispute is a commercial Land within Municipal Council area.

In their decision, they said the following:

“Since the Provincial Land Disputes Committee has no mandate to revoke a Title Deed, this committee has dismissed the application.”

“The judgment of Meru South Land Disputes Tribunal stands.”

The effect of these pronouncements according to my understanding and submission is that the appellant’s claim had been rejected and dismissed as the Tribunals had no jurisdiction to interfere with the registered Land which had a Title Deed.

The claim was also time barred as it was bought 33 years after registration.

Before we come to the Appeal your Lordship, our submission is that the decision of the Meru South Land Disputes Tribunal and the Provincial Land Appeals Committee were right and proper as they had no jurisdiction to disturb the registration.

In this case is (sic) dispute is on ownership land which all parties agree is registered and Title Deed issued.

It is land reference No. Karingani/Ndagani/906. That in our submission was a dispute outside the tribunal.

Both tribunals were also right in adding that they had no jurisdiction to entertain the claim. Since there are no pleadings like in a court of law they had right to hear parties and examine the documents relied on. They stood with the law.

B. THIS APPEAL

According to section 8(9) of the Land Disputes Tribunals Act No. 18 of 1990, either party to the Appeal before the Provincial Land Disputes Appeals Committee may appeal to the High Court on a point of Law within sixty days from the date of the decision complained of.

The appeals committee made its decision on 21st October, 2008. The parties were clearly advised of their right of appeal within 60 days.

The appeal before your Lordship is dated 4th August, 2009. It was filed on 6th August, 2009.

A rough count shows that it was filed 300 days after the decision of the appeals committee.

The appeal was obviously filed out of time and on that ground it should be dismissed.

C. GROUNDS OF APPEAL

The grounds of appeal are self defeating.

GROUND 1 – Complains that the appeals committee entertained the dispute which they had no jurisdiction.

Your Lordship, there (sic) decision is clear as they said as much.

Consequently, they were right in agreeing with the Land Disputes Tribunal that they could not decide on the Titled Land.

The appeal has no merits and it is a misunderstanding of the decision.

The claim was also time barred although it was unnecessary for the Appeals Committee to go into all this after deciding that they had no jurisdiction to interfere with title to registered land.

We pray that the Appeal be dismissed with costs.

We have attached the following authorities for the court’s consideration.

- a) Copy of Land Disputes Tribunals Act 1990
- b) Sawe Tanui Chelangat vs Jeptum T. Siron Civil Appeal No. 74 of 2003 (Eldoret)

DATED AT MERU THIS 4TH DAY OF MAY, 2018

MAITAI RIMITA & CO.

ADVOCATES FOR THE 1ST RESPONDENT

5. The 2nd Respondent, the Provincial Land Disputes Tribunal is defunct by operation of law and did not file written submissions.
6. The appellant proffered the classic case of *“Owners of the Motor Vessel “Lillian S” Versus Caltex Oil (Kenya) Ltd* in support of its assertion that the Provincial Land Disputes Appeals Committee at Embu lacked jurisdiction to entertain the Appeal presented before it. This is a good authority in its elaboration of the issues of jurisdiction.
7. Upon perusal of the apposite pleadings the following was the decision of the Chuka Land Disputes Tribunal;

“DECISION OF THE TRIBUNAL

“Having heard and considered the representations of all the parties (and their witnesses and having considered all documents submitted to us, we hereby decide as follows: This case has been overtaken by events. Therefore, by virtue of section 143 of the registration (sic) land act (sic) (cap 300) the title cannot be impugned even for fraud or mistake being the first registration.”

8. In other words, the District Tribunal was saying that it lacked jurisdiction.
9. The Embu Provincial Land Disputes Appeals committee had this to say:

FINDINGS

After perusing the documents in the file this Tribunal Appeals Committee found the following:

1. That the land in dispute has a title deed
2. That the land in dispute is a commercial land within the municipal area.

“RULING

Since the Provincial Land Dispute has no mandate to revoke a title deed, this committee has dismissed the application. The judgment of Meru South land disputes tribunal stands”

10. According to me the upshot of the decision made by the Provincial Appeals Committee was that it lacked jurisdiction AND also that the District Land Disputes Committee lacked jurisdiction.
11. It is instructive that the appellant was the plaintiff in the proceedings before the District Land Disputes Committee. He was also the Appellant in the proceedings before the Provincial Land Disputes Committee.
12. The respondent has proffered the case of *Sawe Tanui Chelagat Versus Jeptum Taprandich Siron, Eldoret High Court Civil Appeal No. 74 of 2003* which eruditely restates the principle that where a tribunal or a court holds that it has no jurisdiction, it should immediately stop hearing of the matter in question. I opine that this case is relevant to the circumstances of this case. The cases proffered by the Appellant, to wit, MV LILIAN S [1989] KLR 1, REPUBLIC VERSUS BAHARI LAND DISPUTES TRIBUNAL [2007] eKLR and REPUBLIC VERSUS LAND DISPUTES TRIBUNAL (LIMURU DIVISION) & 2 others Ex-parte ALICE NYAKIO NJENGA [2014] eKLR are good authorities that a court or a tribunal cannot arbitrate over a matter if it lacks jurisdiction. All are relevant to the circumstances of this case.
13. Having considered the pleadings, the authorities and the submissions proffered by the parties in support of their assertions, I find as follows:
 - a) Ground 1 in the Memorandum of Appeal is dismissed. The Provincial Land Appeals Committee rightly held that it had no jurisdiction to grant the appellant the reliefs he had sought before it.
 - b) Ground 2 in the Memorandum of Appeal is dismissed. The Provincial Land Appeals Committee merely upheld the decision of the District Disputes Tribunal which had unequivocally held that it lacked jurisdiction to grant the reliefs the Appellant had sought before it.
 - c) Ground 3 in the Memorandum of Appeal is dismissed. Of course, not seized with jurisdiction, the Provincial Land Disputes Appeals Committee could not interfere with the decision made by the Land Disputes Tribunal, whose decision had the effect of its declaration that it lacked jurisdiction to grant the reliefs the appellant had sought before it.
14. For the foregoing reasons, I do find that this appeal merits dismissal.
15. Consequently this appeal is dismissed.
16. Even though I have already dismissed the appeal, I have the following to say concerning the issue of the appeal having been filed beyond the 60 days stipulated by section 8(9) of the Land Disputes Tribunals Act. This is not a procedural technicality. This is a legal requirement.

The decision of the Provincial Appeals Committee was made on **21st October, 2008**. This appeal was filed over 9 months after expiry of the period stipulated by the Land Disputes Tribunals Act. I opine that the late filing of this appeal was a good ground for its dismissal.

17. In the circumstances, I reiterate that this appeal is dismissed.

18. Costs shall follow the event and are awarded to the 1st Respondent.

19. It is so ordered.

Delivered in open court at Chuka this 17th day of July, 2018

in the presence of:

CA: Ndegwa

I.C Mugo h/b Rimita for 1st Respondent

AG for 2nd Respondent – Absent

Muia Mwanzia for Appellant - Absent

P.M. NJOROGI

JUDGE