



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC APPEAL NO. 104 OF 2008**

**(FORMERLY MERU HCA. 14 OF 2001)**

**LUCIA THIRINDI M'ABUAMBI.....APPELLANT**

**VERSUS**

**PETER MPEKETHU MUNORU.....RESPONDENT**

**JUDGMENT**

1. The appellant and the respondent were parties in the proceedings in the District Land Disputes Tribunal Meru North in **LDT Case Number 99 of 2005**. In that case she stated that she was the wife to the late M'Abwambi Muthuri; that the respondent's land measured **0.70 acres** and the deceased's land measured **1.53 acres**; that however, after the death of the appellant's husband, the respondent herein took away the deceased's shamba. Her evidence was to the effect that the respondent had his land gathered together with the deceased's such that the two parcels were registered in the respondent's name thus rendering her landless. She averred that she lived on the disputed land and that even as at the date of the Tribunal hearing the parties were still living on their respective fenced portions of the disputed land. She demanded that **1.5 acres** of the suit land be excised from **Parcel Number 2994** and be registered in her name. The claim was naturally opposed by the respondent. That case was decided in favour of the appellant. The Tribunal ruled that the appellant herein had proved her case and ordered that the District Land Registrar Meru North do subdivide **Land Parcel Ithima/Antuambui/2994** into two parcels of **0.70 acres** which was to be registered in the appellant's name and the remainder which was to be registered in the respondent's name.

2. The respondent appealed to the Provincial Land Disputes Appeal Committee in **Provincial Land Disputes Appeal Committee case number 71 of 2006**. The committee returned its verdict on the appeal before it on the **22<sup>nd</sup> February 2006** and ordered that the land belonged to the registered owner.

3. After the verdict of the Provincial Land Disputes Appeal Committee was delivered the appellant filed a Memorandum Of Appeal dated **3/5/2008** in the High Court in which she raised the following grounds:-

**1. The members of Panel erred in law and fact in breaching (sic) the rule (sic) of Natural Justice and S. 77 (9) of the Constitution of Kenya that (sic) they never awarded appellant a hearing before making the verdict they made.**

**2. The Appeal Panel erred in law in failing to follow the provisions of the law on the hearing the Appeal.**

**3. The entire verdict is unfair, unconstitutional and unprocedural.**

4. The appellant prayed for the appeal to be allowed with costs in the Tribunal and in the High Court. After the establishment of this court the appeal was transferred to it for hearing and determination.

5. Before this appeal was heard the respondent sought leave through an application dated **17/2/2011** to produce additional evidence in the form of **Maua PMCC No 94 of 2000** and **MERU HCCA NO 4 OF 2001**

6. The basis on which the application for production of further evidence was made was that the question of ownership of the suit land had been determined by courts of competent jurisdiction in both **Maua PMCC No 94 Of 2000** and **Meru HCCC No 4 of 2001**.

7. Further it was the argument of the respondent in this appeal while making the application for additional evidence that the **LDT Case No 99 of 2005** was in contempt of both the trial court and appellate courts in both **Maua PMCC 94 of 2000** and **Meru HCCA No 4 of 2001**. The respondent avers that he mentioned the existence of these two cases before the Tribunal and the Tribunal failed to record the fact of their having been brought to its attention.

8. The application for additional evidence was allowed on **29<sup>th</sup> January 2014**. Pursuant to that decision the entire file record in **Meru**

**HCCA No 4 of 2001** was availed to this court. I have confirmed that the bundle I have contains the entire record in respect of that appeal as well as certified copies of the proceedings in **Maua PMCC No 94 of 2000**.

**The appellant's submissions.**

9. The appellant filed her submissions on the **25<sup>th</sup> September 2017**. She submitted that her appeal was brought on the basis that she was never accorded a hearing before the Provincial Land Disputes Appeal Committee and that no provisions of the law had been followed during the hearing of the appeal. She restated her case before the Tribunal in **Land Disputes Tribunal Case Number 99 of 2005** and narrated the events up to the time of her lodging of this appeal.

10. According to the appellant the only issue to be determined in this appeal was whether the appellant was accorded a fair hearing and whether procedures of the committee on appeal were followed. She avers that **Article 50(1)** of the Constitution of Kenya entitles every person to have any dispute that can be resolved by an application of the law decided in a fair and public hearing before a court, independent Tribunal or body.

11. She cited the case of **Ridge vs Baldwin 1964 AC 40**, stating that it laid emphasis on the right to fair hearing.

12. She avers that the proceedings were wrongly conducted in that on **7<sup>th</sup> October 2008** the parties to the appeal before the Provincial Land Disputes Appeal Committee were merely sworn after which the respondent produced the Title deed, green card and a map and the committee immediately made a decision in favour of the respondent. It is on this basis that she submits in this appeal that the committee never accorded her a fair hearing and that the appeal procedure set out in **section 8** of the **Lands Disputes Tribunals Act Cap 303 A** was not followed.

13. Notably she does not mention any of the proceedings that were brought to the attention of the court by way of additional evidence. **The Respondent's Submissions.**

14. The respondent submitted that based on the additional evidence that was brought to court at his instance, the appeal is res judicata. He submitted that it has not been denied that the appellant is the mother of the defendant in **Maua PMCC No 94 of 2000** and who later appealed in **Meru HCCA No 4 of 2001**.

15. It is clear that the main issues that arise in the instant suit are :

**a. whether this appeal is res judicata; and**

**b. whether the appellant was accorded a fair hearing by the Provincial Land Disputes Appeal Committee.**

**a. Whether this appeal is res judicata**

16. I have examined the submissions of the respondent on this point. The submissions of the appellant only bear studious silence on the issue of *res judicata*.

17. In **Maua PMCC No 94 Of 2000** the respondent herein sued one **Peter Meme** for an order restraining the defendant from interfering with the plaintiff's possession of **land parcel Ithima Antuamburi /2994** and **ksh 10,000/=** being survey fees and costs of the suit. The respondent's claim was that he owned the land in question measuring **2.22 acres**. In that case he gave evidence of how he acquired the said land from one **M'Mauta M'Kairiama** about **18** years previously. He testified that the land used to belong to the defendant's father whose land was demarcated elsewhere at **Mwerongundu**.

18. The defendant's defence is that though the respondent herein held the title deed for the entire parcel, what he owned was only **0.70 acres** of that parcel. He alleges that the defendant however colluded with land officials who gathered portions from other areas and demarcated the same for the respondent to make a total of **20 acres**.

19. He averred that the *miraa* on the land was planted by his father. He testified that the plaintiff entered the land in **April 2000** and demolished buildings on the land. The **Land Registrar** was also called as a witness and he testified that there are two parcels with one number.

20. The conclusion of the trial court in that case was that the respondent herein had proved his case against the appellant. In effect, the respondent had proved that he was the registered owner of the land in question and that the appellant had not shown that he had better right to the land. The court also stated that the defendant had not proved that there was any error in surveying of the land which gave the respondent herein more land than he had bought, and that even if that had been so **Section 148** of the **Registered Land Act** gave **6 months** within which a claim against the respondent herein could have been brought. The court stated as follows:

***"What the defendant has tried to do is to tell us what used to be the position and ownership of the land before registration. Such evidence can not be entertained because registration concluded the issue of ownership."***

21. The court issued an order injuncting the defendant, his servants, agents, relatives or anybody claiming under him from trespassing into or otherwise interfering with the plaintiff's **Land Parcel No Ithima Antuamburi/2994** measuring **2.22 acres**.

22. The defendant in that case appealed in **Meru High Court Civil Appeal No 4 of 2001** on **2/10/2003**. However according to the record the appeal was dismissed with costs by **Sitati J** on **25<sup>th</sup> June 2004**. A notice of appeal was filed giving intention of intention to appeal against

the High Court judgment to the Court Of Appeal but it is not known whether any appeal was lodged with the Court of appeal.

23. It is strange that in the wake of all these submissions and evidence the appellant in this appeal has not said a word about the earlier litigation.

24. In my view the averments by the respondents are correct. **Meru North LDT NO 99 of 2005, Maua PMCC No 94 of 2000, MERU HCCA NO 4 of 2001** and finally, **Provincial Land Disputes Appeal Committee Case Number 71 of 2006** involved the same land that is **Land Parcel Ithima/Antuambui/2994**.

25. The dispute in **Meru North LDT NO 99 of 2005** was decided on **22/2/2006** while judgment in the **Maua PMCC No 94 of 2000** had been given on **7/12/2000**.

26. It is clear that the defendant in **Maua PMCC No 94 of 2000** stated that his father's name is M'Abuambi. It can be gathered from the proceedings before the LDT in **Meru North LDT NO 99 of 2005** that M'Abuambi is the deceased husband to the appellant herein. Since the appellant has not controverted that fact in this appeal, it is deemed to be the truth.

27. The Appellant's son was defending in **Maua PMCC No 94 of 2000** by claiming that the land belongs to M'Abuambi, his father. On the other hand the appellant's claim before the Tribunal in **Meru North LDT Case 99 of 2005** was that the land belonged to the same M'Abuambi who was her husband.

28. The decree issued in **Maua PMCC No 94 of 2000** bound the appellant herein as she was the mother to the defendant therein. She was not entitled to bring any further proceedings in the Land Disputes Tribunal as she did. The decision made by that Tribunal is therefore a nullity.

29. If this court went ahead and determined this appeal it would be going against the provisions of **Section 7** of the **Civil Procedure Act** which provide that :

*“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”*

30. The conclusion is that the appellant lodged a case before the Tribunal while the suit regarding the said land had been determined by a court of competent jurisdiction.

31. Consequently, I find that the issue concerning ownership of **Land Parcel Ithima/Antuambui/2994** is *res judicata*. In the light of the above and for obvious reasons, I am therefore not inclined to delve into the second issue as to the nature of proceedings that were conducted before the **Provincial Land Disputes Appeal Committee Case Number 71 of 2006**.

32. I therefore dismiss this appeal with costs to the respondent.

Dated, and signed at Kitale on this **1<sup>st</sup>** day of **August, 2018**.

**MWANGI NJOROGI**

**JUDGE**

**ENVIRONMENT AND LAND COURT, KITALE**

Delivered at Meru on this 29<sup>th</sup> day of August, 2018 in open court in the presence of:

Mr. Kirimi holding brief for Ms. Kiome for appellant

Respondent present in person

C/A: Mutua

**MWANGI NJOROGI**

**JUDGE**

**ENVIRONMENT AND LAND COURT, KITALE.**