



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

ELC NO. 415 OF 2017

BEDAN M. CHEGE.....APPELLANT

VERSUS

JULIUS KABUGU NDUNGU.....RESPONDENT

JUDGMENT

(Appeal from decision of Land Disputes Appeal Committee; dispute before the Land Disputes Tribunal being one over ownership of land; Tribunal and Appeals Committee could not have had jurisdiction; Tribunal and Appeals Committee declaring that the respondent is owner of the suit properties; suit properties registered in the names of third parties not parties before the Tribunal; improper for Tribunal and Appeals Committee to have proceeded to hear the dispute without the registered proprietors being parties; appeal allowed with costs)

1. This is an appeal from the decision of the Land Disputes Appeals Committee, Rift Valley Province, which was made on 10 June 2009. The brief facts of the matter that gave rise to this appeal, are that in the year 2007, the respondent herein, Julius Kabugu Ndungu, filed a complaint against the appellant, Bedan Mwangi Chege, before the Naivasha Land Disputes Tribunal (LDT), over the land parcel Kijabe/ Kijabe Block 1/1873 (hereinafter referred to as "the suit land"). The respondent's case before the LDT, was that in the year 1983, he was given a share by his grandfather, one Kabugu Githuthu Kibe, at Maai-Mahiu Kijabe Longonot Company Limited. Since he was then very young, this share was granted to his mother, one Monicah Wangechi Ndungu. His mother then balloted for the suit land in the year 1984 and was shown the location of the land but she later went back to her homestead. When he grew up his mother showed him the land and he visited it a couple of times. However, on his third visit, he found the land well fenced. He did a search and found out that the title was now in the name of one Martha Muthoni Maina, whom he did not know. It is averred that Martha was summoned by the Chief of Maai-Mahiu but never showed up. He did a further check at the land registry in Nakuru, which now revealed that the title was held in the name of Kabugu Githuthu Kibe. It is then that he decided to file the case at the LDT. Among his witnesses at the LDT was one Robinson K. Mwangi, who testified that the respondent, in the year 2006, requested him to look for a survey to place fresh beacons on the suit land. There was also a statement from Joseph Ndungu Kabugu, Patrick Kamuri Kabugu, James Mwangi Kabugu, and John Kibe Kabugu, who described themselves as members of the family of Kabugu Githuthu Kibe. They averred that the share over the suit land was given to the respondent and they have no claim over it. A third statement was by the respondent's father, who stated that in the year 1983, his father in law, called a meeting to announce that he had given the respondent the share over the suit land. He stated that all the original documents were given to his wife, i.e the mother of the respondent, and that she did ballot for the suit land.

2. The Tribunal was convinced that the respondent has proved ownership of the suit land and directed the appellant to return the land to the respondent within 14 days.

3. The appellant was aggrieved by this decision and appealed to the Rift Valley Land Disputes Appeals Committee. Before the Committee, the appellant claimed to have purchased the suit land from a commercial agency and later sold it. It was then subdivided into three parcels namely Kijabe/ Kijabe Block 1/ 6486, 6487 and 6488 registered in the names of Ruth Muthumbi, Ismail Mburu and Martha Muthoni Maina. The Appeals Committee was not persuaded that the appellant obtained the land legally, and directed that the titles of the three owners be cancelled and the land parcel be reinstated to the original land parcel No. 1873 in the name of the respondent.

4. It is then that the appellant filed a further appeal to the High Court as provided for under the Land Disputes Tribunal Act. With the formation of the Environment and Land Court, the appeal was referred to this court for disposal.

5. In his written submissions, Mr. Musembi Ndolo, learned counsel for the appellant, reduced the seven grounds of appeal into three, being :-

(i) Whether the Naivasha Land Tribunal and the Rift Valley Province Land Disputes Appeal Committee had jurisdiction to arbitrate a dispute of ownership in respect of the suit land.

(ii) Whether the principals of natural justice were breached by both the Naivasha Land Tribunal and the Rift Valley Province Land Dispute Appeal Committee for failure to summon Ruth Wamaitha Muthumbi, Ismael N. Mburu and Martha Muthoni Maina, the registered owners of the suit premises before reaching their findings.

(iii) Whether the respondent had legal capacity to lodge the land dispute for want of letters of administration.

6. On jurisdiction, it was his position that the ownership revolved around ownership of the title of the suit land and therefore the Land Disputes Tribunal and Appeals Committee did not have jurisdiction. He referred me to the case of ***Wamwea vs Catholic Diocese of Muranga (2003) KLR 389 and R vs Soy Division Land Disputes Tribunal, Eldoret High Court Misc. Appeal No. 302 of 2003***. On the second issue, he submitted that the matter was heard against the principles of natural justice and that it was incumbent for the registered proprietors to be summoned and served. On capacity, he submitted that the respondent had no capacity as the property belonged to his deceased grandfather and he had not transferred it before his death.

7. On his part, Mr. Kahiga, for the respondent, inter alia submitted that the appeal herein, being a second appeal, is incompetent for failure to raise any issues of law. He referred me to Section 8 (9) of the Land Disputes Tribunal Act (now repealed) which provides that a further appeal to the High Court, is only to be on matters of law. He submitted that this appeal does not satisfy the requirements of Section 8(9) above. He submitted that it was incumbent upon the appellant to obtain a certificate that the appeal raises issues of law, and he referred me to the case of ***Esther Tala Chebiegon vs Kiplagat arap Biator (2005)eKLR***. On jurisdiction, he was of the view that the issue before the Tribunal was one of trespass and that the tribunal in ordering the appellant to vacate the suit land was an order ordinarily given in a suit for trespass. He averred that the tribunal had jurisdiction over a claim for trespass. On legal capacity, he submitted inter alia that the suit land was already given to the respondent by his grandfather and thus belonged to him and not his grandfather. He submitted that it is illogical for the appellant to insist on letters of administration when the land belonged to the respondent. On the question whether the suit was heard in breach of the rules of natural justice, he submitted that the suit was instituted against the appellant, and the award only affected him. He submitted that the titles of the three current proprietors emanated from the appellant, and the respondent was not concerned with the titles of the third parties. He submitted that the third parties were not privy to the respondent's claim.

8. I have considered the matter alongside the above submissions of counsel. I am also of opinion that the

seven grounds of appeal can be reduced to the three that Mr. Ndolo raised.

9. On the issue of jurisdiction, it is imperative that a matter be heard and determined by a body with jurisdiction to do so. When a body purports to take upon itself jurisdiction that it does not have, any decision made by such body will be a nullity in law and prone to be set aside.

10. The jurisdiction of the Land Disputes Tribunal is elaborated in Section 3(1) of the Land Disputes Tribunal Act, (now repealed) which is drawn 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 and work land; or

(c) trespass to land, shall be heard and determined by a Tribunal established under Section 4.

11. The Tribunal that was established under Section 4 of the statute is the Land Disputes Tribunal (LDT). It will be seen from the above that the jurisdiction of the LDT was limited to the matters pointed out above. The jurisdiction of the LDT did not extend to hearing matters related to ownership of title to land, which remained the preserve of the courts.

12. Despite the submissions of Mr. Kahigah, that the dispute before the LDT was one of trespass, that does not appear to be the case. The respondent advanced a case over ownership of the suit properties and claimed that the same belonged to him. The LDT and the Appeals Committee, agreed with the contention of the appellant and proceeded to award him the suit properties. They indeed directed that the names of the title holders be canceled and in place thereof the respondent be registered as proprietor. That, by any stretch of imagination, cannot be referred to as a simple case of trespass. This was a clear case over ownership of title, and the LDT did not have jurisdiction to hear such dispute.

13. It is therefore my holding that the LDT and the Appeals Committee did not have jurisdiction to hear the dispute that was presented by the respondent. Where a body proceeds to hear a dispute for which it has no jurisdiction, its decision is a nullity which cannot be upheld. Given this holding, I do not hesitate to set aside the decision of the LDT and the Appeals Committee.

14. Moreover, it will be noted that at the time that the respondent made a complaint over the suit land to the tribunal, the properties were not registered in the name of the appellant, but in the name of third parties who were not sued before the tribunal. Even assuming that the tribunal had jurisdiction, the tribunal could not proceed to cancel the titles of the third parties and vest the respondent with titles, for in doing so, the tribunal would be divesting persons of title without first hearing them. There was thus a clear breach of natural justice. Before their titles could be cancelled, the third parties needed to be parties, and they needed to be heard. But all this does not matter, for in any event the tribunal had no jurisdiction.

15. I have seen the argument raised by Mr. Kahiga, that the appeal has not been certified as raising issues of law, but I see no substance in the said argument, and to me it is a red herring. This appeal raises issues of law and is competent. I really do not see the need of saying more on this score.

16. Given the above, it is clear that I am persuaded that this appeal must succeed and does succeed. I hereby set aside the decision of the LDT and the Appeals Committee. If the respondent feels that he has a case to present, then he must present the same at the correct forum and sue all relevant parties.

17. The respondent shall also shoulder the costs of the proceedings before the tribunal, the Appeals Committee, and of this appeal.

19. Judgment accordingly.

Dated, signed and delivered in open court at Nakuru this 20th day of September 2018.

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU

In presence of: -

Mr. Musili holding brief for Mr. Ndolo for the appellant.

Mr. Katithi holding brief for Mr. Gatonye for the respondent.

Court Assistant: Nelima

JUSTICE MUNYAO SILA

ENVIRONMENT & LAND COURT AT NAKURU