



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC APPEAL NO. 3 OF 2018

LIMANGURA NGURAMUKAPPELLANT

VERSUS

JOSEPH KILEKWANGRESPONDENT

[An appeal from the Decision of the Provincial (Rift Valley) Land Disputes Appeals Committee and which was read and adopted as a judgment of the Court on the 8/7/2010 vide Kitale CMC Land Case No. 12 of 2010]

JUDGMENT

The Appellant's Case

1. The appellant **Limangura Nguriamuk** being aggrieved by the decision of the **Provincial (Rift Valley) Land Disputes Appeals Committee** and which was read and adopted as a judgment of the Court on the **8/7/2010**, vide **Kitale CMC Land Case No. 12 of 2010**, filed a Memorandum of Appeal dated **11/8/2010** in which he raised the following grounds:-

(1) That the Provincial Land Disputes Appeals Committee erred in law when it failed to appreciate that it had no jurisdiction to handle a dispute challenging the ownership of land registered under the Registered Land Act, Cap. 300 of the Laws of Kenya.

(2) That the Provincial Land Disputes Appeals Committee erred in law when it failed to appreciate that under the Land Disputes Tribunal Act, it had no jurisdiction to declare a trust over registered land.

(3) That the Provincial Land Disputes Appeals Committee erred in law when it failed to appreciate that the respondent's claim was barred by the Limitation of Actions Act.

2. The appellant prays for the appeal to be allowed with costs and that the decision of the Provincial (Rift Valley) Land Disputes Appeals Committee and which was read and adopted as a judgment of the court on **8/7/2010** vide **Kitale CMC Land Case No. 12 of 2010** be set aside, and in its place an order be made dismissing the respondent's claim, as had been done by the Chepareria Land Disputes Tribunal, and whose decision had been adopted as a judgment of the court on **11/3/2009** vide **Kitale CMC Land Case No. 65 of 2008**.

3. The first issue is whether the appeals committee had jurisdiction to deal with registered land. It has already been ruled that a tribunal can only carry out the mandate bestowed upon it by the law. Any action that falls outside the parameters set out in section **3(1)** of the Land Disputes Act is therefore beyond the powers of the tribunal. It is alleged in this appeal that the committee dealt with matters concerning ownership of the suit land. The decision of the committee is contained at **page 5-7** of the appeal bundle. For the second time in a row in as many months I am compelled to look for evidence of registration status of the suit land in the proceedings of an Appeals Committee. However this court can not be blind to the fact that when the decision of the Appeals Committee was being implemented facts came up showing that the land comprised in the affected parcel, **Parcel Number West Pokot Chepareria/94** was registered under the Registered Land Act as at **1/7/98** while the appeal decision was issued on **4/5/2010**. Evidence of the registered status of the suit land is contained at **page 25-33** of the appeal bundle which comprises of a certificate of official search, a mutation form, an application for consent of the Land Control Board and **Gazette Notice Number 516** dated **20th January 2012** issued by the Land Registrar Kitale, all in respect of the suit land.

4. I therefore find that the land was registered and that the appeals committee went beyond its powers in issuing orders that would affect ownership of the land which power is not granted to the land disputes tribunal and by extension the appeals committee.

Determination

What orders should issue?

5. The appeal is deemed as successful on the basis of the first issue analysed above and in the view of this court it is not necessary to delve into the other two issues. I therefore find that the appeal has merits. I issue the following orders:

(a) This appeal is hereby allowed

(b) The decision of the Rift Valley Provincial Land Disputes Appeals Committee and which was read and adopted as a judgment of the court on 8/7/2010 vide *Kitale CMC Land Case No. 12 of 2010* is hereby set aside, and in its place an order is hereby made dismissing the respondent's appeal before the said Appeals Committee.

(c) The respondent shall pay the costs of this appeal and of the appeal before the appeals tribunal.

It is so ordered.

Dated, signed and delivered at Kitale on this 30th day of **October, 2018.**

MWANGI NJOROGE

JUDGE

30/10/2018

Coram:

Before Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

N/A for the parties

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

30/10/2018