



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANGA

ELC APPEAL NO. 5 OF 2018

STANLEY KAIRU NJUGUNA.....APPELLANT

VS

KAMUGUNDA CATTLE DIP.....RESPONDENT

JUDGMENT

1. This appeal relates to the judgment of Hon. S. Mbungi, Principal Magistrate Kigumo in LDT Case No 51 of 2005. It is stated that the judgment was delivered on the 5/9/10. The judgment relates to the award of the elders in LDT 86 of 2005. In it the Tribunal returned an award expressed in the following terms;

“Having heard and considered all evidence and representation by both parties, the tribunal decision is as follows;

- a) The Kamung’ang’a cattle dip land LOC.18/GACHOCHO/4240 belongs to the community and therefore has to be transferred from the objector and be registered in the community’s name legally.
- b) The Court Executive Officer Murang’a to sign all transfer documents to ensure smooth process of transfer of the land from Stanley Kairu Njuguna (objector) to the Kamung’ang’a Cattle Dip community.
- c) The land to be changed from Agricultural lands to Cattle Dip accordingly.
- d) The District Lands Registrar and the District Land Surveyor to assist in ensuring the transactions are processed according to law.

Costs award.

- a) The claimant and the objector to share the dispute costs equally.
- b. The claimant to pay the objector a third(1/3) of the surveyors fees paid at the time of sub-division of the original land LOC.18/GACHOCHO/716 into 3, parcels including the Cattle Dip parcel.
- c. The claimant to pay for the Government Tax for their parcel.

2. According to the records of the lower Court file in LDT No 51 of 2005, the Principal Magistrate Hon S Mbungi, on application by the parties, adopted the award of the tribunal as a judgment of the Court on the 5/9/11. It would appear that the orders were not extracted and the record of Appeal is misleading as it refers to a decision of the Hon S Mbungi on the 5/9/10. I have examined both the typed proceedings of the Court attached to the record of appeal and note that there are no records of such proceedings. I have seen untyped proceedings of the 5/9/2011 where the learned Principal Magistrate delivered a ruling adopting the said award. The record of appeal dated the 28/9/15 and filed on the 1/10/15 refers to the non-existent judgment of the learned magistrate delivered on the 5/9/2010. Similarly, the Supplementary record of Appeal dated the 12/10/15 and filed on the 13/10/15 makes reference to the fictional judgment of the learned Principal Magistrate Hon S Mbungi. The record shows that Hon S Mbungi started hearing this matter from the 20.1.11. He therefore could not have made the orders being appealed to.

3. Taken in context of the appeal and the award of the LDT No 51 of 2005 and the ruling delivered on the 5/9/2011, the Court takes that the date 5/9/2010 is erroneous and the correct date of the orders being appealed against are the 5/9/2011. It shall proceed to determine the matter with the correction of the dates as stated above.

4. This appeal is riddled with errors as the drafters did not bear much care and attention to details. The Respondent then Defendant in the lower Court was named and styled Kamunganga Cattle Dip while in the appeal it is fashioned as Kamugunda Cattle Dip. There is no

amendment of the names on record and the Court will proceed as though the name of the Respondent is as stated in the lower Court file.

5. Aggrieved by the decision of the Learned Principal Magistrate, the Appellant filed this appeal on the grounds that;

a) The judgment of the Court as adopting the award of the tribunal is unlawful, unconstitutional and inconsistent with the clear provisions of the Land Disputes Tribunal Act as read with the provisions of the Registered Land Act.

b) The Honourable Magistrate erred in law and fact by entering as judgment of the Court an illegal award made by a tribunal that had no jurisdiction to hear and determine a claim touching on land registered under the Registered Act.

c) The Honourable Court erred in law and fact by awarding a judgment on an entity (Kamunda Cattle Dip?) that neither legal nor a juristic personam within the meaning of the law.

6. The Appeal was not opposed by the Respondents despite being duly served with the appeal. The Court notes that the Vice Chairman of the Respondent, Mr Mugo Kuria was served on the 27/10/2015 in person at Kamugunda village Kigumo District as per the affidavit of service filed on the 4/10/15. On the 15/4/16 the law firm of Mwangi Kamau & Co advocates were duly served with the Notice for directions in accordance with the affidavit of service filed on the 10/5/16. The said summons were received under protest on account that the said law firm no longer acts for the Respondents. They expressed their desire to file an application to cease acting. The Court has perused the file and it would appear that no such application was filed and subsequent notices were served on them as seen in the acknowledgements on record. The Court deems that they are still on record for purposes of representation for the Respondents.

7. By the time of writing this judgment only the Appellant had filed written submissions.

8. The Appellant submitted that the dispute between the Appellant and the Respondent (its officials being James Kamau, James Gutu and Esther Jimna) relates to a portion of 0.5 acres of a portion of Land Ref LOC 18/GACHOCHO/4240 which land is registered in the name of the Appellant. That the award of the Land Dispute Tribunal was adopted as an order of the Court lending itself subject to appeal. He submitted that the Land Dispute Tribunal had no jurisdiction under section 3 of the Land Dispute Tribunal Act to hear and determine disputes touching on title on registered land. That the tribunal acted ultra vires its powers and therefore the award and the judgment of the Court was a nullity.

9. Further that the Respondent is an entity unknown in law. It is neither a Company nor a Cooperative Society with no powers to sue nor be sued. The Court therefore erred in appropriating land to an unknown entity. He urged the Court to allow the appeal.

10. Having reviewed and considered the record of appeal in its entirety and the submissions before the Court, the key issues for determination are; whether the Land Dispute Tribunal had jurisdiction to hear and determine the dispute; whether the award and the judgment of the Court is a nullity; whether the Respondent is a legal entity; who meets the costs of the appeal.

11. Section 3 of the Land Dispute Tribunal Act Cap 303A states as follows;

“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.

(2) Every dispute referred to in subsection (1) shall be instituted.”

12. It is not in dispute that the subject matter before the Land Disputes Tribunal was title in a registered land (suit land). In answer to the question whether the Land Dispute Tribunal had jurisdiction to hear and determine the dispute in the suit land, I adopt the decision in the case of **Mateo Githua Ngurukie vs. Hon. Attorney General and 5 Others; Nyeri High Court Civil Suit No. 206 of 1999** where **Ombwayo J.**, stated:-

“Over and again the Court of Appeal and High Court have held that the Land Dispute Tribunal lacks jurisdiction over registered land especially where the matter at hand touches on title of land. (See Wachira Wambugu Case (*supra*) and Julius Mburu Mbutia case, *supra*).

13. In the case of In the **case of the Owners of the Motor Vessel Lilian ‘S’ v. Caltex Kenya Limited (1989) KLR 1** in which the Court succinctly set out the principles and context for determination of jurisdiction. Nyarangi, JA stated, *inter alia*:-

“Jurisdiction is everything. Without it, a Court has no power to make one more step. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

14. The law is well settled that a decision which is arrived at without jurisdiction is a nullity. In the case of **SIR ALI BIN SALIM VS. SHARIFF MOHAMED SHATRY CIVIL APPEAL NO. 29 1940** it was stated that; -

“If a Court has no jurisdiction over the subject matter of the litigation, its judgments and orders however precisely certain and technically correct are mere nullities and not only voidable; they are void and have no effect either as estoppel or otherwise and may not only be set aside at any time by the Court in which they are rendered, but be declared void by every Court in which they may be presented. It is well established law that jurisdiction cannot be conferred on a Court by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction”.

15. I find and hold that the Tribunal did not have the jurisdiction to hear and determine the dispute relating to title in land.

16. As to the legal standing of the Respondent the Court is unable to decipher what it is on account of lack of documentation. I make no orders in respect thereof in view of the decision in para 14 and 15 above.

17. In the end the appeal is for allowing. The award and the Judgment delivered in the lower Court are nullified and its consequential orders are set aside.

18. The costs of this appeal and the case in the lower Court are in favour of the Appellant.

Orders accordingly

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 13TH DAY OF DECEMBER 2018

J. G. KEMEI

JUDGE

Delivered in open Court in the presence of:

Mugo HB for Kirubi for the Appellant

Respondent – Absent

Irene and Njeri, Court Assistants