



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

CIVIL APPEAL NO. 54 OF 2008

ELIUD MAITHYA KILILIAPPELLANT

VERSUS

WAMBUA MUSOMBA1ST RESPONDENT

NZEMBA MUSOMBA2ND RESPONDENT

(Being an Appeal from the decision of the Eastern Provincial Land

Disputes Appeals Committee at Embu dated 17th January, 2008

in Appeal Case No. 23 of 2006)

JUDGMENT

1. This Judgment is in respect to appeal against the decision of the then Embu Provincial Land Disputes Appeals Committee which was delivered on 10th March, 2008.
2. According to the Memorandum of Appeal that was filed on 14th March, 2008, the Appeals Committee erred by directing that parcel of land known as Kiene Ng'undu Nos. 52 and 33 be registered in the joint names of the Respondents; that the land was registered in the name of the Appellant and that the Committee exceeded its jurisdiction by declaring that the Respondents are entitled to the suit property by virtue of the doctrine of adverse possession.
3. The Appeal proceeded by way of written submissions.
4. The Appellant's advocate submitted that the case before the Tribunal was about and concerned ownership of land; that the Tribunal acted outside its jurisdiction and that the issue of adverse possession is the preserve of the High Court.
5. On the other hand, the 1st Respondent's advocate submitted that the appeal was filed out of time; that it is the Appellant who raised the issue of ownership and that it is the Appellant who filed the dispute before the Tribunal.
6. The record shows that the Appellant herein commenced proceedings before the Makueni District Disputes Land Tribunal.
7. After hearing the dispute, the Tribunal made an Award to the effect that *"the piece of land to be subdivided into four (4) equal parts to the following persons- Nzemba Musomba/Wambua Musomba, Eliud*

Maithya Kili, Douglas Muoki Musuuzo Ndambuki Nthasyo.”

8. The Respondents herein were dissatisfied by the decision of the Tribunal. They lodged the Appeal with Embu Provincial Disputes Land Appeals Committee on 17th January, 2008.

9. After hearing the Appeal, the Committee overturned the decision of the Tribunal and directed that parcel of land number Kiene Ng’undu Nos. 52 and 33 should be registered in the names of the Respondents jointly.

10. The Appeal herein was logged on 14th March, 2008, which was within sixty (60) days of the decision of the Appeals Committee.

11. Section 3(1) (a) of the Land Disputes Tribunals Act (*repealed*) donated to the Land Disputes Tribunal the authority to determine all cases of a civil nature involving the division of, or the determination of boundaries to land, including land held in common.

12. A party who is dissatisfied with the decision of the Tribunal could appeal to the Appeals Committee. According to the provision of Section 8(8) of the Act, the decision of the Appeals Committee was final on any issue of fact and an appeal cannot lie to any court. However, either party may appeal from the decision of the Appeals Committee to the High Court on a point of law (*See Section 8(a) of the Act*).

13. Although the Appellant’s counsel has submitted that the Appeals Committee did not have jurisdiction to delve into the issues of ownership of the suit property, it suffices to state that it is the Appellant who commenced the proceedings in the Tribunal.

14. I have perused the proceedings by the Tribunal and the Appeals Committee. At no particular point did the Appellant raise the issue of jurisdiction viz-a-viz the issue of ownership of the suit property.

15. Indeed, having not raised the issue of jurisdiction with the Tribunal and the Appeals Committee, the Appellant cannot raise the issue at this stage considering that he is the one who commenced the proceedings.

16. In any event, there is no evidence that was placed before the Tribunal and the Appeals Committee to show that the Appellant is the registered proprietor of the suit property.

17. In the absence of a copy of the Title Deed or an official search, this court cannot state with certainty that the Appeals Committee did not have the requisite jurisdiction to arrive at the decision that it arrived at.

18. I have perused the proceedings of the Appeals Committee and I have not come across a decision that was based on the doctrine of adverse possession. All that the panel observed was that the Respondent and their father had been on the land for about thirty five (35) years.

19. In the circumstances, I decline to allow the Appeal on the ground that the Appeals Committee did not have the jurisdiction to deal with the issues that were before it.

20. For those reasons, I dismiss the Appellant’s Appeal with costs.

DATED AND DELIVERED AT MACHAKOS THIS 24TH DAY OF MARCH, 2017.

OSCAR A. ANGOTE

JUDGE