



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

CIVIL APPEAL NO. 11 OF 2013

STANLEY IHA WANJE.....APPELLANT

VERSUS

SAMSON KAZUNGU NGUMBAO.....RESPONDENT

JUDGMENT

1. This Judgment is in respect to an Appeal that was filed by the Appellant against the decision of the Malindi Land Dispute Tribunal in Land Dispute Case No. 18 /1996.
2. In the Memorandum of Appeal, the Appellant averred that the Tribunal erred by entertaining a dispute which it lacked jurisdiction; that the Tribunal did not recognize the fact that the suit land was government land and the Respondent was just a squatter and that the Tribunal did not have the powers to allocate to the Respondent the land in question.
3. The Appellant finally averred that the Tribunal erred by not appreciating that by the time they were handling the dispute, the Appellant had already been allocated the suit land by the Settlement Fund Trustees and paid for it.
4. The Appeal proceeded by way of written submissions.
5. The Appellant's advocate submitted that the Appellant was allocated the suit property on 28th February, 1997 by the Government; that the Appellant paid the requisite fees and that it is the Appellant who was entitled to the suit land.
6. Counsel submitted that if the Respondent was aggrieved with the said allocation, he should have lodged his complaint with the department of Land Adjudication and Settlement; that the Tribunal did not have jurisdiction to handle the dispute and that the Respondent took sixteen (16) years to lodge his complaint with the Tribunal.
7. The Respondent's counsel deponed that the suit land belonged to the Respondent's father; that the Respondent's father gave the suit land to his daughter, the Appellant's wife and that the Tribunal did not err when it found that indeed the land belonged to the Respondent.
8. The Respondent's advocate finally submitted that the Appellant held the suit property in trust for the Respondent and that this court has the powers to revoke the Title Deed that was issued to the Appellant.
9. The proceedings of the Malindi Land Dispute Tribunal shows that the Respondent lodged his claim against the Appellant and two other people, Kambi Wanje and Kaiha Wanje Kebao.

10. The Respondent informed the Tribunal that the land in dispute belonged to his father; that when his father was sick, he informed the Appellant, who is his son-in-law, to assist him to put up a house on the suit land and that it was at the particular point that his father allowed the Appellant to live on the suit property.
11. The Appellant's evidence was that when he went to check with the land office in 1980, he found that the land that he was residing on was government land; that he applied to be allocated the said land and that he was issued with a Title Deed.
12. After hearing the parties, the Tribunal ordered that the Appellant with his family were not entitled to the land and should therefore not trespass on it.
13. The Tribunal further directed that the Respondent should be registered as the proprietor of the suit land and further that the Appellant should pay compensation of Kshs. 200,000.
14. By the time the decision was made on 27th May, 2011, the Provincial Land Disputes Committee, which used to hear appeals from the Tribunals, had been abolished by the operation of the law. That is why this Appeal was filed in this court.
15. The evidence before the court shows that the Appellant was allocated the suit property on 28th February, 1997 by the Director of Land Adjudication and Settlement, on behalf of the Settlement Fund Trustees.
16. According to the letter of offer, the Appellant was required to pay Kshs. 2,250 to the SFT which he did on 10th December, 1997. The Title Deed was then issued to the Appellant on 8th August, 2013.
17. The issue that was before the Tribunal was who between the Appellant and the Respondent's father owned the suit land.
18. While the Respondent's case was that the suit land belonged to his late father, and that his father only allowed the Appellant, who was his son-in-law to utilize it for awhile, the Respondent did not produce any evidence to show that his father had been allocated the land by the Government.
19. Considering that the suit land was neither Trust land nor Private land, the Respondent could not claim that his father was the one entitled to the land in view of the fact that he was not living on the land in the first place.
20. In any event, if the Respondent's father had allowed the Appellant on the land, and the land was later on allocated to the Appellant by virtue of him being in possession of the same, I do not see the Respondent's legal standing in questioning the said allocation.
21. In view of the evidence that was before the Tribunal showing that the Appellant was allocated the suit land by SFT, and in addition to what I have stated above, the Tribunal did not have jurisdiction to entertain the dispute.
22. I say so because under Section 3(1) of the Land Disputes Tribunal Act (repealed), the jurisdiction of the Tribunal was limited to: hearing disputes relating to the division of, or the determination of boundaries to land, a claim to occupy or work land or trespass to land.
23. It was not the mandate of the Tribunal to determine the issue of ownership of the suit land.
24. Consequently, the Tribunal erred by holding that the suit land belonged to the Respondent and by issuing permanent orders of injunction.
25. For those reasons, I allow the Appellant's Appeal and set aside the Award of the Malindi Land Disputes Tribunal in Land Case No. 8/1996 and the judgment of the court in Malindi PMCC No. 18 of

2011.

26. Each party shall pay for his own costs in the Tribunal and in this matter.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O. A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J. O. OLOLA

JUDGE