



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELCA CASE NO. 100 OF 2013**

**STANLEY MUNENE WACHIRA.....APPELLANT**

**VERSUS**

**ELIUD GICHOHI MACHERE.....RESPONDENT**

**JUDGMENT**

***(BEING AN APPEAL FROM THE RULING OF THE PROVINCIAL APPEALS COMMITTEE (CENTRAL) IN LAND DISPUTE CLAIM NO. 15 OF 2009 DELIVERED ON 27<sup>TH</sup> OCTOBER, 2010)***

The subject of this appeal is land parcel No. INOI/KARIKO/2765 (the suit land) which is registered in the names of the Respondent herein.

The suit land was the subject of Central Division Land Disputes Tribunal Case No. TC 13/09/2009 (the Tribunal) where the Appellant and his three brothers namely **MUCHANGI WACHIRA**, **LAYFIELDS J. MURITHI** and **JOEL GATHUBI KARIITU** filed a claim against the Respondent seeking the revocation of the title issued to the Respondent. Their case was that the suit land was a sub-division of land parcel No. INOI/KARIKO/548 registered in the names of one **WACHIRA MWANGI** and later sub-divided into INOI/KARIKO/2658 and INOI/KARIKO/2659 and that they did not know how the Respondent became registered proprietor of the suit land.

The Respondent's case however was that on 29th January 2009 he purchased the suit land for Ksh. 800,000 from the Appellant and a sale agreement was drawn by **NGIGI GICHOYA** advocate and the relevant Land Control Board consent was obtained. However, the Appellant refused to give vacant possession thereof and the Respondent had to seek orders to evict him.

In its award dated 23rd June 2009, the Tribunal made the following orders:

- 1. There was a clean deal that the parcel INOI/KARIKO/2765 was lawfully purchased by ELIUD GICHOHI MACHERE as per well signed sale agreement made between STANLEY MUNENE WACHIRA and witnessed by the advocate NGIGI GICHOYA.***
- 2. The panel has directed the Vendor to refund the entire amount plus interest as per sale agreement, if he feels that the sale deal was not correctly done.***
- 3. We request the Honourable Court to stop forthwith from the Vendor interfering/trespassing in the parcel INOI/KARIKO/2765 as it has already changed hands.***
- 4. Any restriction/caution be revoked by the Court.***

**5. Attached are relevant documents.**

**6. Any aggrieved party has precedences (sic) of appeal within 30 days as from 23.6.2009.**

That award was on 16th July 2009 adopted as an order of the Court in **KERUGOYA PRINCIPAL MAGISTRATE'S COURT TRIBUNAL CASE No. 46 of 2009**. An appeal filed by the Appellant at the Appeals Committee was dismissed on 27th October 2010. This appeal was then filed at the High Court in Nyeri on 20th December 2010.

The Appellant has raised the following four (4) grounds of appeal:

**1. The Tribunal erred in law dealing with a matter involving land based on a contract in which the Appellant was not paid any sum of money at all.**

**2. The Tribunal erred in law in not appreciating that the Appellant was a victim of deception in that he could not have been paid Ksh. 800,000 on 29th January 2009 while the agreement was entered into on the 30th January 2009.**

**3. The Tribunal erred in law in not appreciating that the Appellant being illiterate and unsound (sic) mind by then entered into an agreement whose contents Appellant did not understand and amounted to Respondent taking Appellant's land without receiving any consideration.**

**4. The Tribunal erred in law in not appreciating that the Respondent didn't produce Bank statement for Ksh. 800,000 withdrawal as he alleged.**

The appeal was canvassed by way of written submissions which have been filed by **M. KIMINDA** advocate for the Appellant and **IGATI MWAI** advocate for the Respondent.

I have considered the appeal and the submissions by counsel.

The dispute between the parties involved ownership of registered land which, under **Section 3 (1) of the repealed Land Disputes Tribunal Act (Chapter 303 A Laws of Kenya)**, was not within the jurisdiction of a Tribunal established under **Section 4 of the repealed Act**. This was settled in the case of **JONATHAN AMUNAVI VS THE CHAIRMAN SABATIA LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL No. 256 of 2002 (KISUMU)** where the Court of Appeal held that the Land Disputes Tribunal had no jurisdiction to deal with claims relating to ownership of registered land. That decision has been followed both by this Court and other superior Courts. See for instance **JOSEPH LELEI & ANOTHER VS RIFT VALLEY LAND DISPUTES APPEALS COMMITTEE C.A CIVIL APPEAL No. 82 of 2006 ELDORET (2014 e K.L.R.)**. Therefore, the Tribunal ought to have declined jurisdiction to handle this dispute and referred the parties to file their dispute at the subordinate Court (which had jurisdiction since the value of the suit land was Ksh. 800,000) or alternatively to the High Court. As was held in the case of **OWNERS OF MOTOR VESSEL 'LILLIAN S' VS CALTEX OIL KENYA LIMITED 1989 K.L.R 1**, jurisdiction is everything and where a Court has no jurisdiction, there would be no basis for continuation of proceedings. The Tribunal was therefore not seized of any jurisdiction to make any orders such as that the Appellant refunds the entire purchase price if he felt that the sale agreement was not correctly done nor the finding that the Respondent purchased the suit land in "**a clean deal**".

This appeal must therefore be allowed and the orders of the Tribunal which were adopted by the Magistrate's Court and confirmed by the Appeals Committee set aside with costs to the Appellant.

I must add, however, that neither the Tribunal nor the Appeals Committee interfered with the Respondent's ownership of the suit land. As the Respondent remains the registered owner of the suit land, that ownership can only be challenged in a Court of competent jurisdiction subject of course to the **Law of Limitation**.

It is so ordered.

**B. N. OLAO**

**JUDGE**

**14<sup>TH</sup> JULY, 2017**

Judgment delivered, dated and signed in open Court this 14<sup>th</sup> day of July 2017

Appellant present

Respondent present

Right of appeal explained.

**B. N. OLAO**

**JUDGE**

**14<sup>TH</sup> JULY, 2017**