



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELCA NO. 79 OF 2014

(Formerly NYERI HCC NO. 226 OF 2010)

GEORGE WAINAINA CHEGE.....APPELLANT

VERSUS

SAMSON NJUGUNA WAKAYA.....RESPONDENT

JUDGEMENT

Introduction

1. The respondent herein, Samson Njuguna Wakaya, instituted a claim before the Land Disputes Tribunal at Karuri (hereinafter referred to as the Tribunal) claiming that he was the beneficial owner of a portion of land measuring 33 by 100 feet out of the portion of land known as **Kiambaa/Karuri/T/893** (hereinafter referred to as the suit property).
2. The respondent's case before the Tribunal was that he was approached by the appellant to buy the portion he claimed from the respondent's stepbrother, Ndungu Njibae. He informed the Tribunal that he bought the portion from the appellant's stepbrother, took possession and put up a church known as Halleluyah Gospel Church thereon.
3. The Tribunal heard that the church was built in 2001 and that since then, the claimant and members of his church had been worshipping thereat until sometime in 2007 when the appellant issued them with a notice to vacate the plot claiming that it belonged to him.
4. The Tribunal further heard that the dispute concerning ownership of the plot was taken to the area chief and District officer (D.O) for resolution but the two were unable to resolve it. As a result, the respondent preferred a case before the Tribunal claiming that he was entitled to a portion of the suit property measuring 30 by 100 feet out of Kiambaa/Karuri/T 959, a sub-division of the suit property.
5. The tribunal further heard that the suit property was later sub-divided giving rise to Kiambaa/Karuri/T958 and 959.
6. Apparently Kiambaa/Karuri/T959 which had been sold to the respondent by the appellant's step brother, with full knowledge and participation of the appellant was transferred to the appellant with Kiambaa/Karuri/T958 going to the appellant's step brother.
7. The appellant acknowledged that the respondent bought land from his step brother but denied having

knowledge of the confusion that occurred during transfer of the original parcel of land. In that regard, he informed the Tribunal that he learnt that the title he held was for the parcel of land claimed by the respondent.

8. Upon considering the cases urged before it, the Tribunal ordered that the plot in dispute to wit Kiambaa/ Karuri/T959 be transferred and registered in the name of Hallelujah Gospel Church and a title deed be issued in its name.

9. Aggrieved by the decision of the Tribunal, the appellant appealed to the Provincial Appeal's Committee on 7 grounds that can be reduced to one to wit the Tribunal erred by ordering the transfer of the suit property to Hallelujah Gospel Church yet there was no evidence that the appellant had sold the suit property to the respondent.

10. Upon considering the appeal preferred before it, the Provincial Appeals Committee held:

“...Karuri disputes Tribunal had awarded Kiambaa/ Karuri/T.959 be transferred and registered in the name of Hallelujah Gospel Church and a title issued in its name.

Hallelujah Gospel Church has existed in the suit land since 1997 to date and has about 350 members.

AWARD

This disputes Appeal Committee sets aside its ruling dated 9/11/2007 for it has no jurisdiction under Cap 300.

However, the Provincial Appeals Committee has noted and both parties concur that Hallelujah Gospel Church has existed on the suit land to read Kiambaa/Karuri/T.959 since 1997 amicably. The church has about 350 members. A period where a party has utilized without the registered owner complaining gives the user the right to occupy work land.

This land disputes Appeals Committee therefore accordingly award Hallelujah work land on the suit land Kiambaa/Karuri/T.959 measuring 0.031 Ha.”

11. Aggrieved by the decision of the Land Disputes Appeals Committee the appellant further appealed to this court on the following grounds:

(i) That the land disputes Tribunals established under Section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990 had no jurisdiction to hear and determine a matter touching on title ownership;

(ii) That the Appeals Committee erred in awarding Hallelujah Gospel Church work land on the suit land; and

(iii) That the Appeals Tribunal erred by hearing the case preferred before it yet it had no jurisdiction to do so.

12. The appeal was disposed of by way of written submissions.

Submissions

13. On behalf of the appellant a brief history of the dispute herein is given and submitted that the question that this court needs to answer in order to determine this appeal is whether the Land Disputes Tribunals established under **Section 3(1)** of the Land Disputes Tribunal Act (now repealed) had power to deal with issue of title to land. In this regard, it is pointed out that the Kiambaa Land Disputes Tribunal purported to cancel the title held by the appellant and ordered transfer of the title in favour of Hallelujah Gospel Church, yet it was not a party to the suit.

14. Arguing that only the High Court has power to cancel title, based on the cases of **Mbugua Thiga v. Teresia Wangechi Macharia & 2 Others** Nairobi Civil Appeal No.460 of 2000; **Republic v. Kiambu Disputes Tribunal & Another** Nairobi High Court Miscellaneous Civil Application No.1992 of 2004; **Republic v. the Land Disputes Tribunal Naivasha District** Nairobi Misc. Case No. 935 of 1999; **Asman Maloba Wepukulu & Another v. Francis Wakhubi Biketi** Kisumu Court of Appeal Civil Appeal No.157 of 2001, the appellant maintained that the Appeals Committee had no jurisdiction to make the decision it made.

15. On behalf of the respondent, it is submitted that it is misleading for the appellant to re-introduce the issue of ownership and title to land because the Appeals Committee agreed with him that the lower Tribunal had no jurisdiction to order transfer of the suit land to the church and set aside the award.

16. Arguing that the Appeals Committee decision was not on title to land but on the right to work and occupy the land, the respondent submits that the authorities relied on by the appellant are irrelevant.

17. Based on the provisions of **Section 3(1)** of the Land Disputes Tribunal Act, the respondent submitted that the Tribunal had jurisdiction to determine and grant orders to occupy and work land. **Section 3(1)** aforementioned provides as follows:

“3 (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.”

18. Based on the provisions of **Section 8(1)** of the Land Disputes Tribunal Act, the respondent has submitted that the appeals Tribunal had power to hear and determine an appeal from the Land Disputes Tribunal.

19. The Respondent further faults the Appellant for challenging the jurisdiction of the Appeals Committee yet he is the one who had preferred the appeal before it.

20. According to the respondent, because it is the appellant who preferred an appeal before the Appeals Committee, he is estopped from questioning the jurisdiction of the Appeals Tribunal to hear and determine the dispute he preferred before it.

21. The appeal is also said to be defective and time barred.

Analysis and determination

22. It is common ground that the dispute preferred before the now defunct Land Disputes Tribunal touched on entitlement to registered land.

23. The sole issue for determination is whether the Tribunals established under **Section 4** of the Land Disputes Tribunal Act had power to award work land in respect of registered land.

24. In answering this question, I will not re-invent the wheel but rely on the decision in the case of **Republic v. Kiambu Disputes Tribunal & Another Nairobi High Court Miscellaneous Civil Application No.1992 of 200** which, in my view properly addresses that issue. In that case **Emukule J.**, stated:

“the interested party’s counsel also attacked the application on the grounds of jurisdiction and maintained that the land disputes tribunal had jurisdiction to entertain the interested party’s application to the tribunal principally on the grounds of trespass, possession of the land and the claim to work on the land, the tribunal applied customary law of the Agikuyu on succession to the land, and found that the interested party had a right to the land, and its judgment delivered on 14th July, 2004 unanimously agreed and declared “that the claimant Virginia Wanjiru Munyua in absence of any other offspring is the rightful owner of the land L.R. Nduberi/Ndumberi/2451 should revert to her.

Commencing with the conclusion, that the judgment is neither a finding of the right to work on the land, boundary or trespass, the areas of jurisdiction declared under section 3(1) of the LDTA to be the domain of Land Disputes Tribunal. That judgment is in the nature of a verdict or finding of a Court in succession Cause, and upon a substantive suit, and not upon a reference to a land Disputes Tribunal. I do not therefore hesitate to say that in arriving at that conclusion, the Kiambu Land Disputes tribunal lacked not only jurisdiction but also acted outside its mandate or *ultra vires* the powers donated to it under the LDTA. An order of certiorari shall therefore issue to call up into this court and quash the said decision of the Kiambu Land Disputes Tribunal made on 14th July, 2014.”

25. On whether the Tribunal had jurisdiction to hear and determine the dispute preferred before it, having found that the decision turned on ownership of the suit property, which is registered land, I adopt the decision in the case of **Joseph Malakwen Lelei & Another V. Rift Valley Land Dispute Appeals Committee & 2 others** to the effect that **Section 3** of the Land Dispute Tribunals Act repealed does not confer on the tribunal jurisdiction to deal with issues of determination of title to or ownership of registered land.

26. Since the dispute preferred before the Tribunal could not be determined without considering and determining the rights of the parties to the suit property, which was registered land, I find and hold that the Tribunal lacked jurisdiction to hear and determine the dispute preferred before it.

27. The upshot of the foregoing is that the appeal herein has merit and is allowed as prayed.

Dated, signed and delivered in open court at Nyeri this 16th day of August, 2017.

L N WAITHAKA

JUDGE

In the presence of:

Mr. Thuo h/b for Mr. Gachoka for the appellant

Mr. Wachira Kebuka h/b for Mr. Gatitu for the respondent

Court clerk - Esther