



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MOMBASA

ELCA NO 303 OF 2014

(FORMERLY CIVIL APPEAL NO.120 OF 2009)

EZEKIEL JACOB KUJEGULA alias

EZEKIEL MWANDORO BUNGALA.....APPELLANT

VERSUS

PATRICK CHARLES KOMBO.....RESPONDENT

JUDGMENT

1. This appeal is against the decision of the Provincial Appeals Committee – Coast in Appeal case no.32 of 2004 between Ezekiel Jacob Kujegula alias Ezekiel Mwandoro Bungala and Patrick Charles Kombo. The Appellant has raised two grounds, namely:

a) The Provincial Committee did not have jurisdiction to determine the issues raised in the Land Disputes Tribunal.

b) The issue of ownership cannot be determined by the Land Disputes Tribunal and could not be entertained by the Provincial Committee.

2. It is clear from the record of appeal that the suit was initiated by the Appellant against the Respondent at the Kaloleni Land Disputes Tribunal and the award of the Tribunal was adopted as judgment of the Court by the Resident Magistrate's Court, Kaloleni in **Land Award Case No.3 Of 2004** on the 16th November 2004 in which the Appellant's claim was dismissed. Being dissatisfied with the decision of the Tribunal and pursuant to section 8 of the Land Disputes Tribunal Act (now repealed), the Appellant appealed to the Provincial Appeals Committee, Coast Province vide **Appeal No.321 of 2004**. The Appeals Committee dismissed the Appellant's appeal and upheld the decision of the Tribunal. The Appellant, as was expected was dissatisfied with the decision of the Appeals Committee and exercising his right of Appeal given by Section 9 of the said Act appealed to this court.

3. When the appeal came up for hearing before me on 12th June 2017, counsel informed me that both parties had filed Written Submissions on 17th October 2012. I have considered the submissions made and the case and statutory authorities cited by counsel, and having done so, I take the following view of the matter.

4. The jurisdiction of the Land Disputes Tribunal was circumscribed in section 3 of the repealed Land Disputes Tribunal Act which provided that:

“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.”

5. From the record of appeal, it is not clear how the suit was instituted by the Appellant in the Tribunal as there are no pleadings in form of a statement of claim or defence. However, the facts that emerge from the record of appeal are that the Appellant’s father sold land measuring about 1.5 acres to the Respondents father. The Respondent was using the said land but the Appellant said he was not consulted during the sale and therefore sued him. The Appellant wanted the Respondent to vacate from the land.

6. After hearing the parties and their witnesses, the Tribunal made the following decision:

“As evidence stands as a whole, the plaintiff has miserably failed to prove his claim. It follows therefore, he has lost his claim against the defendant. The costs of this claim is therefore awarded to the defendant”

7. The Appeals Committee in its decision stated as follows:

“This appeal is dismissed. The land in dispute at Ruruma Location, Mikomani area measuring 1.5 acres is the property of the Respondent Patrick C. Kombo. The Appellant, his brother, family or agents should stop interference of the disputed land. The decision of the District Land Tribunal, Kaloleni is upheld.”

8. The Appellant’s grounds of appeal are that the Provincial Committee did not have jurisdiction to determine the issues raised in the Land Disputes Tribunal and that the issue of ownership could not be determined by the Land Disputes Tribunal and therefore could not be entertained by the Appeal Committee. One must treat this line of submissions with a pinch of salt because it is the Appellant that invoked the powers of both the Tribunal and the Appeal committee. That however would not clothe the Tribunal and the Appeal Committee with jurisdiction if they did not have the same.

9. In my view the argument that the Tribunal had no powers to deal with the issue of ownership of land is incorrect. The jurisdiction of the Land Disputes Tribunal include disputes on division of Land and determination of boundaries, disputes on occupation and working on land as well as trespass to land.

10. In the present case, there is no dispute that the Respondent was in occupation of and working on the Suit Land. The Appellant wanted him to vacate from the land. In my view, and it is clear from the record the issues were more of a claim to occupy or work on land and trespass. The Tribunal did not, in fact make any award of ownership. All that it did was to dismiss the Appellant’s claim to have the Respondent out of the land.

11. With regard to the complaint that the Appeal Committee did not have jurisdiction to determine the issues raised in the Land Disputes Tribunal, I take the view that when the Tribunal rendered its decision already referred to above, the Appellant was entitled to appeal to the Appeal Committee as he ultimately did. The Appeal Committee had the power or authority to consider the Appellant’s appeal. Indeed after considering the Appellant’s appeal, the Appeal Committee dismissed the appeal and upheld the decision of the District Land Disputes Tribunal. The Appeal Committee, having upheld the decision of the District Land Disputes Tribunal, had no justification in making a finding as it did, that the land in dispute belonged to the Respondent, and ordering the Appellant, his brothers, family or agents from interfering with it. This, however, in my view did not alter the end result of the decision it arrived at. The Appellant’s complaint that the issue could not be entertained by the Appeal Committee is accordingly without merit. In the end, the appeal has no merit and is dismissed with costs to the Respondent.

Judgment dated, signed and delivered at Mombasa this 28th day of September 2017

C. YANO

JUDGE