



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

E.L.C. APPEAL NO. 14 OF 2017

JOHN KAMAU NDUNGU.....APPELLANT

VS

MARTHA NYOKABI KINUTHIA.....RESPONDENT

JUDGMENT

1. The appeal relates to the award of the Provincial Land Dispute Appeals Tribunal made on the 13/07/2011 in claim No. Murang'a South 6/2009.

2. The award appealed from was stated as follows;

“a) This panel having listened to both parties, having perused through all the relevant documents award with the respect of occupation to the suit land by the appellant who is the wife of the respondent's deceased brother where the respondents lived peacefully with his deceased brother and therefore keep the Murang'a LDT aside and award work land to the appellant as she occupies”.

b) No costs awarded.

c) 60 days right of appeal”.

3. Aggrieved by the above award/decision of the Appeals Tribunal, the appellant John Kamau Ndungu filed the current appeal on the following grounds;

a) That the Provincial Appeals Committee erred in law and in fact in setting aside the decision of the Murang'a South Land Dispute 6/2009 by allowing the respondent herein to work land part of land parcel No. LOC.4/MURUKA/627.

b) The Provincial Appeals Committee erred in law and in fact by not upholding the Appellant sanctity of title by allowing the respondent to work land on land parcel NO. LOC.4/MURUKA/627 which ownership was not questioned in the Provincial Appeals Committee and was not in dispute.

c) The Provincial Appeals Committee erred in law and in fact by not considering the award as keeping the dispute in abeyance by allowing the respondent herein to work land the above mentioned parcel of land.

d) The Provincial Appeals Committee erred in fact and law in not considering indefeasibility of title.

e) That the Provincial Appeals Committee erred in fact and law in not considering the appellant bought land parcel LOC.4/MURUKA/627 which he bought during demarcation and ignored the appellant's witness evidence without any justifiable legal reason.

4. The appeal was disposed by written submissions. The appellant filed his submissions but the respondent did not. Despite service, the respondent did not respond to the appeal. The return of service dated 21/4/2017 wherein she acknowledged receipt by appending her signature on the mention notice on the 15/7/2017 at 3.30pm is referred to.

5. In the Submissions filed on behalf of the appellant reference is made to the Central Provincial Land Appeals Committee that cited without jurisdiction by hearing the dispute over LOC.4/MURUKA/627 when the same tribunal had no jurisdiction to do so. This, it was substituted was *ultravires* the powers of the Land tribunal as outlined in the Land Disputes Tribunal Act. No. 18 of 1990 under section 3. That the tribunal had no power to entertain a claim where there is title to land. That the decision of the Central Provincial Land Appeals Committee is null and void and the same ought to be quashed.

6. The appellant relied on the case of Civil appeal No.9 of **2009 Mwambura Gikuru vs. John Muchunu & 4 others 2014 eKLR** where the Court held that the Mathiyoia Land Disputes Tribunal had no jurisdiction to entertain a matter in which there was title to suit land and hence set aside the decision.

7. The Respondent having been served and having elected not to respond to the appeal, the appeal is hereby undefended.

8. It is not in dispute that the subject matter before the District Tribunal and the appeals tribunal is registered land. The land is registered in the name of the appellant. It is also not in dispute that both the lower and the Appeals Tribunal lacked jurisdiction to hear and determine the dispute preferred before them.

9. The dicta in **Samuel Kamau Macharia & Another. Vs. KCB & 20 others 2012 eKLR**, a Court's Jurisdiction flows from either the Constitution or Legislation or both. A court of law (tribunal) can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. By arbitrating over a matter they had no power to arbitrate, the Tribunals acted *ultra vires*. That being the case, their decision was a nullity in law. In this regard see the case of **Republic v. Chairman, Lurambi Land Dispute Tribunal & 2 others (2006) eKLR (supra)**. Also see the case of **Mateo Githua Ngurukie vs. Hon. Attorney General and 5 Others; Nyeri High Court Civil Suit No. 206 of 1999** where **Ombwayo J.**, stated:-

“Over and again the Court of Appeal and High Court have held that the Land Dispute Tribunal lacks jurisdiction over registered land especially where the matter at hand touches on title of land. (See Wachira Wambugu Case (supra) and Julius Mburu Mbuthia case, supra). It follows therefore that the instant issues are not *Res judicata* due to the fact that they were deliberated upon and determined by an incompetent tribunal that lacked jurisdiction over the same.

In the case of Vincent Kipsongok Rotich v. Orphah Jelangat Ngelechei (2014)eKLR supra, the learned judge Munyao J., declined to declare the suit therein *res judicata* despite the existing decision/order that had been made by the LDT and adopted by the Hon. Magistrates Court.”

10. The Central Appeals Tribunal purported in their determination to make an award by allowing the Respondent to work land did not help the root of the issue which is lack of jurisdiction *abinito*.

11. Having found the proceedings at the defunct Land Dispute Tribunal in respect of this matter having been a nullity in law I declare them as such and direct that the parties revert to the status which obtained before the impugned proceedings were taken. The appeal is allowed.

12. Each party to meet their costs of the appeal.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 28TH DAY OF SEPTEMBER, 2017

J G KEMEI

JUDGE