



REPUBLIC OF KENYA
IN THE LAND COURT OF KENYA AT KAKAMEGA

ELC. APPEAL NO. 1 OF 2014

(From decision of Lurambi Land Disputes Tribunal in case No. 111/2009 first filed at Western Province Provincial Land Disputes Appeals Committee as Appeal No. 81 of 2009.)

ROSEMARY TSUMA ::: APPELLANT

VERSUS

LIVINGSTONE BETTY MUKABANA ::: RESPONDENT

JUDGEMENT

The appellant herein being aggrieved by the decision/verdict and orders of the Lurambi Land disputes Tribunal in Tribunal Case No. 111 of 2009 and dated 9/7/2009 now appeals to this honourable court against said decision/verdict and orders in their entirety on the principal grounds:-

1. That the Lurambi land dispute Tribunal had no jurisdiction to register and or hear and or make orders respecting ownership of land as this exceeded its mandate under section 3 (1), land disputes Act No. 18 of 1990 (as it then was but now repealed).
2. That the Lurambi Land Disputes Tribunal had no jurisdiction to register and or hear and or determine and or make orders respecting the land which formed part of the estate of a deceased person.
3. That there was a misjoinder of the appellant to any suit the respondent may have been allowed to bring as she is not the legal representative of the deceased registered owner of the land.
4. That the respondent's claim if there was any was time-barred under the Limitation of Actions Act.

The appellant prays that this appeal be allowed, the decision/verdict of the Lurambi Land Disputes Tribunal be quashed and the respondent be condemned to pay all costs. Section 3 of the defunct Land Disputes Tribunal Act No. 18 of 1990 limited the powers of claims that tribunals could handle to:-

- a. *The division or determination of boundaries.*
- b. *A claim to occupy or work on land.*
- c. *Trespass to land.*

It is the applicant's Submission that the case dealt with by the District Tribunal and the Provincial Appeals Committee never belonged to any of the categories intended by Section 3 of the defunct Land

Disputes Tribunals Act.

This court has considered the applicant's submissions in great detail. The respondent was served but filed no papers in opposition neither did he attend court. From the decision of the Lurambi Land Disputes Tribunal it was held that the ownership of the disputed land Butso/ Bukura/678 be given to the claimant Livingstone Beti Mukabana who was its legally registered owner. The tribunal further recommended the cancellation of the current title deed bearing the names of the late Brown Aleka Tsuma and in its place a new title deed be issued in the name of the claimant. The operative law was the Land Disputes Tribunal Act (now repealed). Section 3 of the Act stipulated 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.”

In this case, the tribunal meandered beyond its boundaries. In **M'Marete v Republic & 3 others, Court of Appeal, Nyeri, Civil Appeal 259 of 2000 [2004] eKLR** the court held-

“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupancy or work the land, but a claim to ownership. Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under [the] Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction.”

The tribunal in the present case dealt with title to property. It found that the claimant was entitled to part of the title of the land registered in the name of the deceased. The tribunal ordered that the title be cancelled and transferred to the claimant. The dispute between the parties before the tribunal was essentially a claim to title over the land. The proprietor was long dead and no letters of administration to the estate had been presented. From a legal standpoint one cannot then say that the interests of the proprietor or his estate were represented at the tribunal. There is also the disturbing question whether the claim by the claimant was statute barred as it was brought up 20 years after the death of the proprietor of the land.

For those reasons, I find that the proceedings and decision fell well outside the jurisdiction of the Lurambi Land Disputes Tribunal. The proceedings *prima facie* violated the Land Disputes Tribunal Act (now repealed) and the Law of Succession Act. In the case of **Masagu Ole Naumo v Principal Magistrate Kajiado Law Courts & another, Nairobi, High Court, JR 370 of 2013 [2014] eKLR**. In that case, Odunga J held as follows-

“In my view the view that the Tribunal had no powers to deal with registered land is incorrect. What the Tribunal was prohibited from undertaking is a determination with respect to title to land”.

I find that this appeal has merit and I allow the same. I quash the decision/verdict of the Lurambi Land Disputes Tribunal with costs to the appellant.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 15TH DAY OF NOVEMBER 2017.

N.A. MATHEKA

JUDGE