REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC APPEAL NO. 2 OF 2016

ZEBEDAYO ATONGA MUKONAMBI..... APPELLANT

VERSUS

AMOS ALUMADA KEYA……..... RESPONDENT

JUDGMENT

1. By an order of this court given on 16/9/2015 the file relating to Nakuru Provincial Land Appeal Committee Appeal No. 31 of 2008 was ordered to be brought to the Environment and Land Court, Kitale for hearing and disposal.

2. From the court record it appears that due to the reorganization of the Court Registry which resulted in separation of the High Court and the Environment and Land Court Registries, the records relating to the Appeal which were sent to Kitale Law Courts could not be traced for some time hence the delay in the hearing and determination of this Appeal. When the matter was mentioned on 12/4/2017 this court ordered the filing of a record of appeal, which was filed on 21/7/2017 by Ms. Kidiavai & Co. Advocates for the respondents. On 27/9/2017 this court issued time frames for the filing of submissions by the parties. The respondent filed his submissions on 8/11/2017 while the appellant filed his submissions on 10/11/2017

3. In his Memorandum of Appeal the appellant lists 14 grounds as follows:-

(1) That the elders acted outside Land Disputes Tribunal when they heard the dispute of sale of land with property agreements.

(2) That the elders deliberated on matters of civil nature that were outside their jurisdiction.

(3) The elders erred in law by not calling the appellant to testify.

(4) That the elders erred by not taking proceedings from both sides. They only relied on background facts given to them without parties present.

(5) That from the proceedings only on record, you cannot know what transpired, the agreement was not produced and annexed as evidence.

(6) That elders erred by not observing that it was the respondent who breached the contract.

(7) That the proceedings do not disclose what the complaint or claim was and who is who in this matter.

(8) That the respondent has not up to date paid the development expenses.

(9) That the elders erred in law by not determining the interest earned on development expenses.

(10) That elders erred by adding the name of LYDIA MBONE as the third elder and allowing her to sign much later after the purported proceedings.

(11) That the alteration and addition was not signed for.

(12) That the panel of elders does not disclose who their Chairman was.

(13) The elders erred when they condemned the appellant unheard against the rule of natural justice.

(14) That the appellant prays that the Kwanza Land Disputes Tribunal Award be set aside and dismissed with costs to appellant.

The said grounds can be summarized as follows:-

(1) That the Tribunal acted ultra vires its powers/exceeded its mandate.

(2) That the Tribunal denied the appellant natural justice/fair hearing.

(3) Whether there is an error on the record of the Tribunal.

The issues are the issues the court will proceed to address in this judgement.

(1) Whether the Tribunal exceeded its mandate.

4. The mandate of the Tribunal according to the provisions of **Section 3(1)** of the repealed ***Land Disputes Tribunal Act*** was to determine claims in 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

What was the nature of the claim lodged in the Tribunal?

The Proceeding and Ruling of the Tribunal are tersely recorded on one page which is included in the record of Appeal.

It is clear from the heading and in the body of the contents of the document as to who the claimant was. The document is headed thus:

Case No. KLDT 80/2008

Amos Alimada Keya

-vs-

Zebadayo Atonga Mukanabi

Kaisagat Plot 89 5 acres

5. Alumada Keya is the complainant and Zebedayo Atonga is the defendant in the Tribunal proceedings.

6. The origin of the dispute, according to the Tribunal record, is that the land in dispute was sold by the appellant herein to the respondent on 8th January, 2001. The amount said to be the purchase price was paid by April, 2001. However the appellant herein later on demanded Kshs.66,000/= for development expenses relating to the said land by this time the respondent had already taken possession of the land. Upon the respondent's default in paying the amount demanded as development expenses, the appellant repossessed the ½ acre from the land sold to the respondent. He later on repossessed the entire land parcel and stopped the respondent from using the said land.

7. It is on the record that the appellant claimed that he needed to be paid the outstanding development expenses agreed on between the parties before releasing the land to the respondent and in default, the respondent would be compelled to take a commercial plot in Bidii town measuring 50 feet by 100 feet in substitution.

8. The Tribunal record shows that its decision favoured the respondent. It found that the respondent had legally purchased the two acres and that he should be allowed to settle on the piece of land and develop it and that further, the objector should be allowed to receive the development expenses as agreed upon.

9. In determining the first ground hereinabove, as to whether the Tribunal exceeded its mandate, it is noted that the entire dispute arose from the fact of repossession of the entire parcel of land which denied the respondent the right to work on the land or occupy it. This is because the purchase of the land was already complete by the time the dispute regarding development expenses was lodged. The dispute was not, as argued by the appellant herein, about the breach of contract. There was reference to an agreement executed on 8th January, 2001 and an observation that the *"complainant failed to honour the second agreement"* does not *per se* render the proceedings before the Tribunal to be proceedings regarding a breach of contract.

10. The fact of a concluded sale agreement was obvious to all. The first agreement having been concluded and honoured, this is the agreement that gave the respondent herein the right to occupy and develop or work on the land. The main theme in the Tribunal Proceedings was the dispossession of the respondent herein even after having legally acquired the land, not breach of the first agreement. The second agreement had nothing to do with the respondent's possession of and development of the land.

11. The decision of the Tribunal is very clear that the respondent should be ***"allowed to settle on his piece (sic) of land freely for the purpose of development"***. This limb of the decision is not in excess of the mandate given to the Tribunal under **Section 3(1)** of the repealed **Land Disputes Tribunals Act**. It is central determination in the matter. It is severable from the other two limbs which state as follows:-

> **"1. The Tribunal orders that the complainant is the sole legal purchaser of the two acres.**
>
> **2. ……..**
>
> **3. ..……The objector should be prepared to receive the development dues as agreed upon".**

12. If anything, limbs No. (1) and (3) of the Tribunal decision are merely supplementary to the main decision they made. That decision is of the implication that of the two parties before it, only the respondent has a right to occupy on and develop the land. For this reason, I do not find that the Tribunal exceeded its mandate.

(2) Whether the Tribunal denied the Appellant a fair hearing.

13. The record of the proceedings before the Tribunal is scant but it cannot be said that it does not give the reader a clear picture of what happened. The parties concluded an agreement and the respondent

settled on the land. Subsequently the appellant herein demanded additional monies, terming them as ***"development expenses".*** The respondent agreed to pay those expenses. Note that this is long after the respondent's occupation of the premises in dispute. The respondent's delay led to repossession of the whole land by the appellant.

The appellant desired either to be paid the development expenses or in default, give the respondent some other land elsewhere. However the respondent was not interested in that land; he only wanted the land the appellant had sold him earlier.

The Tribunal found that the respondent having bought the land earlier there was no good ground to warrant the appellant's action of ejecting the respondent herein and occupying the said land.

Only the finding that the land been bought, and was supposed to be occupied by the respondent mattered in the dispute, and the Tribunal seemed to recognize this fact.

14. In a Tribunal like the one whose decision is appealed though a good record of the proceedings may be desired, it is good to realize that the Tribunal works in an environment different from a formal court of law and the recording skills available may differ from one Tribunal to another. This court is not inclined to demand any formulaic recording of the proceedings or to place a premium on such mode of recording over the substance of the dispute when that substance is clear. Where a summary shows that the case of complainant was heard and noted down just as the case of the respondent was, there is good reason to believe that the parties were both granted a proper hearing. In this particular case the narrative in the Tribunal's record shows that both parties were heard and the particulars of their case were taken down and a decision given on the issues arising therefrom. Therefore, the allegation that the appellant was not given a fair hearing or that he was denied, natural justice at the tribunal hearing has no basis, whatsoever and I would dismiss the same.

15. For the above reasons, I find that the appeal herein has no merit and the same is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Kitale on this **20th** day of **December, 2017.**

MWANGI NJOROGE

JUDGE

20/12/2017

Before - Mwangi Njoroge -Judge

Court Assistant - Isabellah

Mr. Analo for respondent

Ms. Arunga for appellant

COURT

Judgment read in open court.

MWANGI NJOROGE

JUDGE

20/12/2017