



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NYERI

ELC CIVIL APPEAL NO. 29 OF 2014

(Formerly Nyeri HCCA No. 45 of 2014)

and

ELC CIVIL APPEAL NO. 130 OF 2014

(Formerly NYERI HCCA NO. 89 OF 2011)

HARRISON MURAGURI NDONGA NEPHANTAPPELLANT

-VERSUS-

HARRISON KAMORE KAGUTU RESPONDENT

JUDGMENT

Introduction

1. This appeal relates to an award of the Central Provincial Land Disputes Appeals Committee (hereinafter referred to as “the Appeals Committee”) made on 6th July, 2011 in Land Dispute Claim No. Muranga 12 of 2005.

The award appealed from was in the following terms:-

“AWARD

The appellant should give the respondent his land of one acre as it was decided by the Murang’a Land disputes Tribunal. He should take the matter to the Land Board and process the activity as soon as possible.

Right of appeal 60 days to the High Court.

Each party to meet its costs.”

2. Aggrieved by the aforementioned award/decision of the Appeals Committee, the appellant (Harrison Muraguri Ndonga Nephath) brought the current appeal on the grounds that the members of the appeals

Committee erred by upholding and confirming the award of the Lower Tribunal (Murang'a Land Disputes Tribunal) in Murang'a Land Disputes Tribunal case No. 12 of 2005; that the Appeals Committee erred by failing to appreciate that neither them nor the District Tribunal had jurisdiction to arbitrate on registered land and that the Appeals Committee erred by failing to appreciate that their jurisdiction is conferred and limited by **Section 3(1)** of the Land Disputes Tribunal Act No. 18 of 1990.

3. It appears that two files were opened concerning the same appeal; that is, Nyeri ELC Civil Appeal No. 29 of 2014 and Nyeri ELC Civil Appeal No.130 of 2014.

4. Directions were given on 30th September, 2015 that the two files would be heard and disposed off together.

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

Appellant's submissions

6. In the submissions filed on behalf of the Appellant, it is pointed out that the appellant and the respondent, who are brothers-in-law, had entered into an oral agreement for sale of one acre of land out of **Loc/15/Kigongo/1426** (the suit property) at Kshs. 60,000/=. Explaining that the respondent failed to meet his part of the bargain after paying Kshs. 15,000/= as part payment of the agreed purchase price, the appellant explains that he was forced to file a claim at the District Tribunal to force the respondent to vacate the land. That was so because the respondent who, pursuant to the agreement of sale was in possession of the suit property, had refused to heed his notice to vacate.

7. It is pointed out that the District Tribunal found in favour of the respondent and ordered the respondent to remain in the 1 acre that was sold and subject of the agreement between them.

8. Explaining that the dispute concerned sale of registered land which is not within the ambit of **Section 3(1)** of Land Disputes Tribunal Act, the appellant maintains that both the District Tribunal and the Appeals Committee did not have jurisdiction to adjudicate on matters touching on sale of registered land.

9. Referring to **Sections 159** of the Registered Land Act, Cap 300 Laws of Kenya (now repealed); **Section 3(3)** of the Law of Contract Act, Cap 23 Laws of Kenya and **Section 6(2)** of the Land Control Act, Cap 302 Laws of Kenya, the appellant argues that the agreement entered between the respondent and himself is bad in law.

10. The following authorities are cited in support of the appellant's case:-

- i. Mungai Njoroge v. Githunguri Land Disputes Tribunal & Another Nairobi H.C Misc. Application No.1 of 2007;
- ii. Jacob Gichuki Minjire vs. Agricultural Finance Corporation Nairobi Court of Appeal Civil Appeal No.61 of 1982;
- iii. Machakos District Co-operative Union Ltd v. Phillip Nzuki Kiilu Nairobi Court of Appeal Civil Appeal No.112 of 1997; and
- iv. Fred C. Fedha & Another v. Edwin E. Asava Majani Eldoret Court of Appeal Civil Appeal No.84 of 2004.

Respondent's submissions

11. On behalf of the respondent, it is submitted that the appeal offends the provisions of **Section 8(9)** of the Land Disputes Tribunal Act in that the certificate required to be obtained under that Section was not obtained.

12. The appeal is also said to be incompetent on the ground that the lower court had already adopted the award of the District Tribunal by the time an appeal was preferred before the Appeals Committee.

Pointing out that the order of the lower court adopting the award of the District Tribunal was neither stayed nor appealed from, the respondent terms the current appeal a mere academic exercise.

13. With regard to the points of law alluded to in the appeal, the respondent has submitted that such issues ought to have been addressed through judicial review proceedings.

14. For the foregoing reasons, it is submitted that it would be a travesty of justice to grant the appellant the orders sought.

Analysis and determination

15. It is not in dispute that the dispute which is the subject matter of this appeal relates to enforcement of a sale agreement touching on registered land. In the case of **Mungai Njoroge v. Githunguri LDT & Others** (*supra*), it was stated:-

“... It is clear that proceedings before the Tribunal related to title to land and beneficial interest in land since the 3rd respondent claimed to have been given the said land by her father before he died. This dispute in my view does not fall within S. 3(1) of the LDTA. Such a dispute should be tried by the High Court or by the Resident Magistrate’s Court where the lower court has jurisdiction in terms of S. 159 of the Registered Land Act.

In the case of Mbugua Thiga v. Teresia Wangechi Macharia C.A 460 the tribunal dealt with registered land and justice Aganyanya held that the Land Disputes Tribunal had no jurisdiction to entertain the said matter. I appreciate that this is a decision of persuasive value having been made by a judge of concurrent jurisdiction. In another case of Jotham Amunavi v R KSM CA 256/2002, the Court of Appeal held that Land Dispute Tribunal had no jurisdiction to deal with proceedings relating to title to land or beneficial interest in land. So that even if it was a case of succession, the 3rd Respondent should have filed it in the High Court or a court which deals with succession matters.”

16. In the case of **Republic v. Chairman, Lurambi Land Dispute Tribunal & 2 others (2006) eKLR** it was held:-

“The powers vested in the tribunal under section 3(1) of Act 18 of 1990 do not include power to determine issues of or affecting title to land. The tribunal clearly acted beyond the purview of its jurisdiction and its decision was clearly ultra vires its powers under section 3(1) of the Land Disputes Tribunal Act No.18 of 1990...”

17. In the case of **Mateo Githua Ngurukie vs. Hon. Attorney General and 5 Others; Nyeri High Court Civil Suit No. 206 of 1999** Ombayo 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.”

18. It is clear from the above cited cases, that both the District Tribunal and the Appeals Tribunal did not have jurisdiction to hear and determine issues touching on title to land. That being the case, their decision concerning the title held by the appellant was a nullity. In this regard see the case of **Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 others (2012) eKLR** where it was stated:-

“...A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law 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. We agree with counsel for the first and second respondents in his submission that the issue as to whether a Court of law has jurisdiction to entertain a matter before it, is not one of mere procedural technicality; it goes to the very heart of the matter, for without jurisdiction, the Court cannot entertain any proceedings.”

19. Having found the proceedings preferred at the defunct Land Disputes Tribunal in respect of this matter to have been a nullity in law, I declare them as such and direct that the parties revert back to the status which obtained before the impugned proceedings were taken.

20. Being of the view that it’s the appellant who occasioned the current proceedings by commencing the dispute at the District Tribunal, I condemn him to pay the costs of the appeal.

Dated, signed and delivered at Nyeri this 8th day of June, 2016.

L N WAITHAKA

JUDGE.

In the presence of:

Mr. Muguku for the appellant

N/A for the respondent

Court assistant - Lydia