



IN THE COURT OF APPEAL

AT ELDORET

CORAM: KARANJA, G. B. M. KARIUKI & MWILU, JJ.A.

CIVIL APPEAL NO. 82 OF 2006

BETWEEN

JOSEPH MALAKWEN LELEI.....1ST APPELLANT

JUDETHEUS KIPLAGAT MALAKWEN.....2ND APPELLANT

AND

RIFT VALLEY LAND DISPUTES

APPEALS COMMITTEE.....1ST RESPONDENT

PRINCIPAL MAGISTRATE KAPSABET.....2ND RESPONDENT

VERONICA CHEBICHII KORIR.....3RD RESPONDENT

(An Appeal from the Ruling of the High Court of Kenya at Eldoret (Dulu, J.) dated 30th January, 2006

in

H.C.C. MISC. APPL. NO. 99 OF 2002)

JUDGMENT OF THE COURT

This appeal arises from the Ruling of the High Court of Kenya sitting at Eldoret (Dulu, J.) dated 30th January 2006 but delivered by Gacheche, J. on 26th February 2006 in Miscellaneous Civil Application No. 99 of 2002.

The facts and circumstances surrounding this appeal are straightforward indeed.

Joseph Malakwen Lelei (1st appellant) and **Judetheus Kiplagat Malakwen** (2nd appellant) are father and son. **Veronica Chebichii** (3rd respondent) is the 1st appellant’s mother in law and 2nd appellant’s maternal grandmother.

The 2nd appellant is the registered owner of land parcel known as **NANDI/KEBULONIK/251** measuring 15.5 acres. According to him, the land in question was purchased from one Kipngetch Arap Tanui on 3rd September 1969 by his father on his behalf as he was still a minor.

According to the 3rd respondent however, the plot in question belonged to her late husband who is the person who had purchased the same from the said Kipngetch Arap Tanui. Her evidence was that her late husband had entrusted the 1st appellant to execute the sale agreement on his behalf and he had also entrusted the 1st appellant with the money to pay for the land. According to her, the registration of the parcel of land in question in the name of the 2nd appellant was fraudulently done by the 1st appellant, without her knowledge.

It was her case that she had lived on the said land peacefully for many years until the year 2000 when the 2nd appellant threatened to evict her from the land. It was the threat of eviction that prompted her to file the dispute before the Kabiyet Land Disputes Tribunal claiming that the land belonged to the family and she wanted it to be registered in her name. The Tribunal heard the dispute and gave an award in favour of the appellants herein. The award was filed in the Kapsabet Principal Magistrate's Court where it was read and adopted as a judgment of the court.

Being dissatisfied with the Tribunal's award, the 3rd respondent filed an appeal before the Rift Valley Provincial Land Disputes Appeal Committee as provided for under section 8 (1) of the repealed Land Disputes Tribunal Act (LDTA).

In an attempt to forestall the hearing of the said appeal, the appellants moved to the High Court by way of Judicial Review proceedings in miscellaneous **Civil Application No. 99 of 2002** seeking orders of prohibition against the Provincial Land Disputes Appeals Committee to stop it from entertaining the appeal by the 3rd respondent. Among the grounds raised in the Judicial Review proceedings was that the Land Disputes Tribunal and the Provincial Land disputes Appeals Committee both lacked jurisdiction to hear the matter as it involved registered land which was contrary to the express provisions of **Section 3** of the **LDTA**.

In response to those averments, the 3rd respondent urged that the Land Disputes Tribunal and the Provincial Appeals Land disputes Committee both had jurisdiction to hear and determine her claim. She also submitted that the appellants were estopped from raising the issue of lack of jurisdiction on the part of the Land Disputes Tribunal as they had acquiesced to its jurisdiction by taking part in the proceedings before it. She also contended that **Section 3 (1) (b)** of the repealed **Land Disputes Act** gave the Tribunal jurisdiction to protect her from being evicted from what she had known as her home for over three decades.

The High Court heard and dismissed the application on the grounds, inter alia, that the prerogative orders sought would only issue where there was no procedure or alternative remedy provided for by law. The learned Judge found that the 1st respondent had jurisdiction to hear the appeal and address itself on the issue of the jurisdiction of the Land Disputes Tribunal as conferred by law. The learned Judge further held that the Principal Magistrate Kapsabet (2nd Respondent) had jurisdiction under **Section 7** of the **Land Disputes Tribunal Act (now repealed)** to adopt the award of the Tribunal. He held that;

“The Magistrate can perfectly act in execution of the award. Those are legal powers conferred on the subordinate court. If his client was dissatisfied with the decision of the Tribunal he could have perfectly applied for orders of judicial review to set aside the award, not to prevent the Principal magistrate from acting in execution of the award of the Tribunal which has been adopted.”

Being aggrieved by the said dismissal, the appellants moved to this Court vide the memorandum of appeal dated 3rd April, 2006 on the following grounds:-

“(1) That decision of the learned Judge was legally untenable and unsound and it ought to be reversed.

(2) His Lordship erred in law and fact in holding that the principal Magistrate and the Rift Valley Province Land Disputes Appeals Committee had jurisdiction to deal with the matter.

(3) His Lordship erred in law and fact in failing to hold that the remedy of prohibition was separable from the remedy of certiorari and proceedings to grant the orders sought.

(4) His Lordship erred in law and fact in failing to confine himself to the merits or demerits of the prayers sought in the application before him and in declining to grant the orders sought because other prayers were not sought.

(5) His Lordship erred in law and fact in failing to grant the prayers sought as the decisions of the Land Disputes Tribunal had not been executed nor had the Rift Valley Province Land Disputes appeals Committee heard the appeal.

(6) His Lordship erred in law and fact in holding that the Tribunal, the Principal Magistrate and the Rift Valley Province Land Disputes Appeals Committee had jurisdiction to deal with the matter.

(7) His Lordship erred in law and fact in holding that in the absence of a prayer for an order of certiorari an order of prohibition could not be granted.

(8) The decision of His Lordship was as a whole erroneous.

(9) His Lordship erred in law and fact in failing to note that owing to the Limitation of Actions Act the Land Disputes Tribunal did not have jurisdiction to deal with the dispute and that all subsequent proceedings arising from the same were a nullity and they could therefore be prohibited.”

The appeal came before us for hearing on 17th October, 2013.

Mr Momanyi, learned Counsel for the appellants, ventilated the appeal by arguing all the grounds of appeal together. He urged several points of law among them the issue of lack of jurisdiction on the part of the Land Disputes Tribunal and the Appeals Committee.

Relying on various authorities he availed to the Court, he submitted that the Tribunal had no jurisdiction to determine claims relating to title to land, and also on claims based on Trust. He submitted that the 3rd respondent's claim on behalf of her late husband was based on Trust and thus outside the ambit of the operations of the Land Disputes Tribunal Act. Moreover, Mr. Momanyi argued that the 3rd Respondent did not have the Grant of Letters of Administration giving her authority to institute the suit on behalf of her deceased husband.

On the issue of jurisdiction, he urged us to be persuaded by the case of **Jonathan Amunavi vs. The Chairman Sabatia Land Disputes Tribunal & Another** (Kisumu Civil Appeal No. 256 of 2002), which in summary stated that the Land Dispute Tribunal has no jurisdiction to deal with claims relating to registered title.

On her part, Miss Mbiyu learned Counsel for the 1st and 2nd Respondents, supported the appeal and opposed the decision of the Land Disputes Tribunal. She concurred with Mr Momanyi that the now defunct Land Disputes Tribunals had no capacity to hear the claim. She submitted that **Section 3** of the **Land Disputes Tribunal Act** deprived the Tribunal of jurisdiction to hear the claim. She contended that

the land was registered and therefore whatever was done by the Land Disputes Tribunal was flawed. She relied on a decision of this Court in the case of **Mercia Muliro & Others vs. Saboti Land Disputes Tribunal Civil Appeal 82 of 2011** where this Court restated the jurisdiction of the Land Disputes Tribunal under section 3 of the Land Disputes Tribunal Act.

Mr. Kiprotich, the learned Counsel for the 3rd Respondent asserted that the land was not registered. In our view however, this assertion was patently incorrect in view of the Land Certificate in respect of the said parcel of land at page 46 of the record of appeal. He however, conceded that the Land Disputes Tribunal did not have jurisdiction to determine the issue of Trust but nonetheless urged the Court to allow the appeal.

We have carefully considered the rival submissions of counsel and the relevant law. As we stated at the beginning of this judgment, this appeal is in our view quite straight forward, reason being that it hinges on pure points of law some of which are conceded by learned counsel for the respondents. Ms Mbiyu conceded that the tribunal lacked jurisdiction to interfere with the ownership of registered land. On his part Mr. Kiprotich admitted that the Tribunal lacked jurisdiction to deal with issues of determination of Trust which is what his client was claiming before the tribunal. In effect therefore, he was conceding partially that this appeal has merit. There is also no doubt that the parcel of land in question is registered under the Registered Land Act.

On the issue of jurisdiction, we note that the law on this issue is settled and we do not need to belabour it. **Section 3 of the Land Disputes Tribunal Act (repealed)** gives jurisdiction to the Land Disputes Tribunal to handle claims in the following matters only:

“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 on in common,***
- (b) A claim to occupy, or work land or***
- (c) Trespass to land.”***

Evidently the above provision does not include jurisdiction to deal with issues of determination of title to or ownership of registered land, or the determination of a Trust in favour of a party, which in essence was the basis of the 3rd respondent’s claim. Having found that the Tribunal and the Appeals Committee lacked jurisdiction to arbitrate on the matter before them, then all other grounds become moot. We say so because it is trite that where a court or tribunal takes upon itself to exercise a jurisdiction which it does not possess, its proceedings and decisions are null and void. It then follows that every other proceeding, decision, or award that results from such a process must be construed as a nullity. See **Macfoy v. United Africa Co. Ltd 1961 3 All ER 1169; Re Continental Credit Finance Ltd [2003] 2 EA 399; Owners of Motor Vessel “Lillian S” vs. Caltex Oil (Kenya) Limited (1989) KLR 1.**

Moreover, **Section 159 of the Registered Land Act** (now repealed) which was in operation when the 3rd respondent filed her claim before the Tribunal was explicit that such a dispute could only be tried by the High Court. See **Jotham Amunavi vs The Chairman Sabatia Land Disputes Tribunal & Another CA No. 256 of 2002 (Kisumu).**

On that ground, we find that the tribunal lacked the requisite jurisdiction to enable it hear and purport to determine the 3rd respondent’s claim. According to the 3rd respondent however, the appellants should not be allowed to hide behind the cloak of jurisdiction as they willingly participated in the proceedings before the Tribunal and so they acquiesced to the “jurisdiction” of the tribunal and they should therefore, be estopped from raising that ground on appeal. The position in law however is that acquiescence, or participation in proceedings before a body bereft of jurisdiction cannot confer jurisdiction.

From the foregoing, it is clear that the Tribunal's proceedings were *ultra vires* and its decision null and void for all intents and purposes. We do however, wish to point out that the learned Judge did not fall into any error in his finding that the Principal Magistrate had jurisdiction to read the Tribunal's award and adopt the same as judgment of the court. That is so because the learned Magistrate was mandated to do so under **Section 7** of the **LDT Act** (repealed).

For the foregoing reasons, we find this appeal meritorious. We allow the same and order that given the circumstances surrounding the matter, each party will bear its own costs.

Dated and delivered at Eldoret this 11th day of April, 2014.

W. KARANJA

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JUD GE OF APPEAL

G. B. M. KARIUKI

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JUDGE OF APPEAL

P. M. MWILU

.....

JUDGE OF APPEAL

*I certify that this is a
true copy of the original.*

DEPUTY REGISTRAR

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