



**Karanja v Mwai & another (Environment & Land Case 88 of 2022)
[2024] KEELC 6373 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6373 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 88 OF 2022
YM ANGIMA, J
SEPTEMBER 26, 2024**

BETWEEN

LUCY NYAMBURA KARANJA PLAINTIFF

AND

GERALD KARUGA MWAI 1ST DEFENDANT

ISAAC WARUTERE MWAI 2ND DEFENDANT

JUDGMENT

A. Plaintiff's Claim

1. By a plaint dated 14.07.2020 Plaintiff sued the Defendants seeking the following reliefs:
 - a. A declaration that the Ndaragwa Land Dispute Tribunal Award in case No. Nda/6/2008 in the matter of Gerald Karuga Mwai & Isaac Warutere Mwai -vs- Lucy Nyambura Njuguna delivered on 10.03.2009 is null and void for want of jurisdiction by the said Land Dispute Tribunal.
 - b. A declaration that the adoption of the award by Ndaragwa Land Dispute Tribunal in Nda/6/2008 by Nyahururu PMCC in Land Dispute No.29 of 2009 is null and void and the resultant judgment and decree lack force of law as the same resulted from the adoption of a decision that was null and void ab initio for want of jurisdiction.
 - c. A declaration that the Plaintiff is the lawful owner of Nya/Kiriita Shauri Block 1 (Leshau Pondo) 972 and the entries against the title in favour of the Defendants be reversed accordingly.
 - d. A permanent injunction against the Defendants restraining the Defendants from disposing, selling, charging, leasing and or dealing with the suit land in any manner whatsoever.
 - e. Costs of this suit.



2. The Plaintiff pleaded that at all material times prior to 2009, she was the registered owner of Title No. Nyandarua/Kiriita Shauri Block 1 (Leshau Pondo)/972 (the suit property). It was pleaded that in the year 2008 the Defendants filed a claim before the defunct Ndaragwa Land Disputes Tribunal (the tribunal) claiming the suit property. It was further pleaded that even though the tribunal lacked jurisdiction over the claim it purported to make an award in favour of the Defendants on 10.03.2009.
3. It was further pleaded that the said award of the tribunal was subsequently adopted as a judgment in Nyahururu PMCC Land Dispute Case No. 29 of 2009 which resulted in the cancellation of the Plaintiff's title over the suit property. It was contended that the said award by the tribunal was null and void ab initio for want of jurisdiction under the Land Disputes Tribunals Act, 1990 hence it could not form the basis of a valid judgment.

B. Defendants' Response

4. The Defendants filed a defence and counterclaim dated 01.07.2021 in answer to the suit. By their defence, the Defendants pleaded that they were the registered proprietors of the suit property. They pleaded that they had a legitimate claim before the tribunal and denied that the tribunal had no jurisdiction to entertain the same or to make the award in their favour. They consequently denied that the award and subsequent judgment of the subordinate court were null and void.
5. By their counterclaim, they reiterated the contents of their defence and pleaded that they had been in occupation of the suit property since 1977 when their late father Mwai Karuga (Mwai) purchased it from one, Kamunya Kahuko (Kahuko) who was said to be a member of Leshau Pondo Farmers Co. Ltd. (the company). They pleaded that in spite of the foregoing the Plaintiff had caused the suit property to be fraudulently transferred into her name.
6. It was the Defendants' case that upon discovery of the alleged fraud on the part of the Plaintiff they filed a claim before the tribunal in 2008 which upon hearing the same made an award in their favour granting them the suit property in 2009. It was further pleaded that the said award was adopted as a judgment by the magistrates' court and that the Plaintiff had never appealed against the said judgment. The Defendants contended that in the premises, the Plaintiff was not entitled in law to challenge the said judgment through a fresh civil suit.
7. By reason of the foregoing, the Defendants sought the following reliefs against the Plaintiff:
 - a. A declaration that the Plaintiffs to the counter-claim lawfully acquired proprietorship over the suit land and that their title is valid.
 - b. A declaration that the Plaintiffs to counter-claim are the rightful owners of Nyandarua/Kiriita/Shauri Block 1 (Leshau Pondo)/972.
 - c. A declaration that the Defendant's title to the suit property was acquired illegally and or unlawfully.
 - d. Costs of the suit and counter-claim plus interest thereon at court's rate.
 - e. Any other or better relief deemed fit by the honourable court.

C. Plaintiff's Rejoinder

8. The record shows that the Plaintiff filed a reply to defence and defence to counterclaim dated 11.07.2022. By her reply to defence, she joined issue with the Defendants' defence and reiterated the



contents of the plaint. It was pleaded that the Defendants had never presented any claim on behalf of Mwai hence their occupation of the suit property was unlawful.

9. By her defence to counterclaim, the Plaintiff denied all the factual allegations contained in the counterclaim and put the Defendants to strict proof thereof. She denied that the Defendants were the legitimate owners of the suit property. She pleaded that she had acquired the suit property through succession proceedings from her late husband Samson Njuguna Ngigi (Ngigi) who was a member of the company.
10. The Plaintiff denied that she had obtained registration of the suit property through fraudulent means and put the Defendants to strict proof of the alleged fraud. The Plaintiff reiterated that the tribunal had no jurisdiction to entertain the Defendants' claim and make the award because the dispute involved ownership of registered land. It was the Plaintiff's case that such ownership dispute could only be resolved before a court of law. As a result, she asked the court to dismiss both the defence and counterclaim and enter judgment in her favour as prayed in the plaint.

D. Trial of the Action

11. At the hearing hereof, the Plaintiff testified on her own behalf as the sole witness and closed her case. She adopted the contents of her witness statement dated 14.09.2020 as her evidence in-chief and produced the eleven documents in her list of documents as exhibits.
12. On their part, the Defendants called 4 witnesses at the trial. They testified on their behalf by adopting their respective witness statements. They called an assistant chief from Gitundu sub-location in Othaya as their 3rd witness. They also called the Land Registrar – Nyandarua County as their 4th witness.

E. Directions on Submissions

13. Upon conclusion of the trial, the parties were granted timelines within which to file and exchange their respective submissions. The record shows that the Plaintiff filed written submissions dated 20.09.2024 whereas the Defendants' submissions were dated 06.06.2024.

F. Issues for Determination

14. It is evident from the record that the parties did not file an agreed statement of issues for determination. The Plaintiff filed a list of 6 issues whereas the Defendants filed a list of 5 issues. In the circumstances, the court shall frame the issues as provided for under Order 15 rule 2 of the Civil Procedure Rules. Under the said rule, the court may frame issues from any of the following:
 - a. The allegations contained in the pleadings or answers to interrogatories.
 - a. The allegations contained in statements made by or on behalf of the parties.
 - b. The contents of documents produced by the parties.
15. The court has perused the pleadings, evidence and documents on record in this matter and is of the opinion that the following are the key issues for determination herein:
 - a. Who as between the Plaintiff on one hand, and the Defendants on the other hand is the rightful owner of the suit property.
 - b. Whether the tribunal had jurisdiction to entertain the Defendants' claim and, if not, what's the consequence thereof.
 - c. Whether the Plaintiff is entitled to the reliefs sought in the suit.



- d. Whether the Defendants are entitled to the reliefs sought in the counter-claim.
- e. Who shall bear costs of the suit and counterclaim.

Analysis and Determination

a. Who as between the Plaintiff on one hand, and the Defendants on the other hand is the rightful owner of the suit property

16. The court has considered the material and evidence on record on this issue. Each side submitted that it had proved ownership of the suit property. The Plaintiff contended that the suit property was initially owned by Ngigi who was a shareholder of the company and that she acquired the same through succession proceedings upon the demise of Ngigi.
17. The Defendants on the other hand contended that the suit property was initially owned by Mwai who had bought it from Kahuko who was also a shareholder of the company. They further stated that it was Mwai who had gifted them the suit property in family meeting attended by DW3. It was their case that the Plaintiff had obtained registration of the suit property fraudulently hence the tribunal had jurisdiction to make the award in their favour in 2009. They emphasized that the said adoption of the award by the magistrates' court was never appealed.
18. The court is of the opinion that the issue of ownership can be adequately resolved through the evidence of the land-registrar Nyandarua who testified as DW4. She produced an extract of the allocation register of the company on the basis of which title deeds were prepared for the entitled members. The allocation register bore among other details the name of the allottee, his identity card number, the acreage allotted and the parcel number allocated. According to the register Plot No. 972 (the suit property) was allocated to Ngigi of Identity No.10340252/64. She confirmed that the name of Kahuko did not appear in the register with respect to Parcel 972.
19. There was no allegation or demonstration by the Defendants that the allocation register of the company had been falsified. There was no evidence at the trial to demonstrate that either the Plaintiff or Ngigi had obtained the suit property through fraud. In fact, no particulars of the alleged fraud were given in the counterclaim. In the premises, the court believes the oral evidence and documentary evidence of DW4 that according to the company's allocation register, the rightful allottee of the suit property was Ngigi. The material on record shows that the Plaintiff acquired the suit property through succession proceedings upon the death of Ngigi. As a result, the court finds and holds that the Plaintiff is the legitimate owner of the suit property.

b. Whether the tribunal had jurisdiction to entertain the Defendants' claim and, if not, what is the consequence thereof

20. The court has considered the material and submissions on record. The Plaintiff was of the view that under Section 3 of the Land Disputes Tribunals Act, 1990 (the Act), the tribunal's jurisdiction was limited to deal with only 3 matters and the issue of the title to land was not one of them. The Plaintiff contended that the award of the tribunal was thus null and void for lack of jurisdiction and that the subsequent adoption thereof by the magistrates' court was equally null and void.
21. The Defendants were of a contrary view. They contended that since the Plaintiff had failed to appeal the decision of the tribunal to the Provincial Appeals Committee and ultimately to the High Court then the award of the tribunal and the consequent judgment of the magistrates' court were valid. It was further submitted that the Act had provided a specific appellate mechanism for dealing with any grievances for matters arising under the Act and that by failing to strictly observe the same she was



not entitled to challenge the award and resultant decree in this suit. The Defendants cited the case of *Mathenge -vs- Gatua & Another (Civil Appeal 94 of 2018)* [2024] KECA 341 (KLR) (22 March, 2024) in support of their submissions.

22. It would appear that there are two different views by the Court of Appeal on the status of an award made by a tribunal without jurisdiction under the Act. The court is aware of earlier decisions in which it was held that the decision of a tribunal acting without jurisdiction is a nullity and that any subsequent adoption of such an award would not cure the nullity. For instance, see the cases of *Jotham Amunavi -vs- Chairman Sabatia Division Land Disputes Tribunal & Another*, Kisumu Civil Appeal No. 256 of 2002 (un-reported) and *Dominica Wamuyu Kibu -vs- Johana Ndura Wakaritu Nyeri Civil Appeal No. 269 of 2007* (unreported).
23. However, in the case of *Florence Nyaboke Machani -vs- Mogere Amosi Ombui & 2 Others* [2014] elklr the Court of Appeal took a different view and held that a party aggrieved by an award of the tribunal ought to follow the specific appellate procedures provided in the Act failing which the award and the subsequent decree shall remain valid.
24. The court is of the view that the earlier Court of Appeal decisions have not yet been overruled by the decision cited by the Defendants. The earlier benches consisted of 3 appellate judges in the same way the latter decisions were decided by a similar number. In the premises, the court goes by the earlier decisions. As a result, the court finds and holds that the award of the tribunal in favour of the Defendants over the suit property was a nullity and that the subsequent judgment of the subordinate court was equally null and void.

c. Whether the Plaintiff is entitled to the reliefs sought in the suit

25. The court has found that the Plaintiff is the legitimate owner of the suit property. The court has found that no fraud was established against the Plaintiff in her acquisition of the suit property. The court has also found that the decision of the tribunal was null and void for want of jurisdiction and that its subsequent adoption by the subordinate court could not confer jurisdiction where none existed. It would, therefore, follow that the Plaintiff is entitled to the reliefs sought in the plaint save for an injunction which shall be unnecessary in view of the fact that the Plaintiff is the successful party in the litigation.

d. Whether the Defendants are entitled to the reliefs sought in the counterclaim

26. In view of the court's findings on the preceding issues, it is obvious that the Defendants have failed to prove their counterclaim against the Plaintiff. It would thus follow that the Defendants are not entitled to the reliefs sought in the counterclaim or any one of them.

e. Who shall bear costs of the suit and the counterclaim

27. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons -vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the Plaintiff shall be awarded costs of both the suit and counterclaim as the successful party.



H. Conclusion and Disposal Orders

28. The upshot of the foregoing is that the court finds that the Plaintiff has proved her claim to the required standard whereas the Defendants have failed to prove their counterclaim to the required legal standard. As a consequence, the court makes the following orders for disposal of both the suit and counterclaim:

- a. Judgment be and is hereby entered for the Plaintiff in the following terms only:
 - i. A declaration be and is hereby made that the Ndaragwa Land Disputes Tribunal award dated 10.03.2009 in case No. NDA/6/2008 is null and void.
 - ii. A declaration be and is hereby made that the adoption of the said award by the subordinate court in Nyahururu PMCC Land Dispute No. 29 of 2009 was equally null and void.
 - iii. A declaration that the Plaintiff is the legitimate and rightful owner of Title No. Nyandarua/Kiriita Shauri Block 1 (Leshau Pondo)/972 and that all entries against the title in favour of the Defendants be cancelled accordingly.
- b. The 1st and 2nd Defendants' counterclaim be and is hereby dismissed in its entirety.
- c. The Plaintiff is hereby awarded costs of the suit and counterclaim.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 26TH DAY OF SEPTEMBER, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Ms. Mwangi holding brief for Mr. Waiganjo for the Plaintiff

Ms. Muigai for the 1st and 2nd Defendants

C/A - Carol

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Y. M. ANGIMA

JUDGE

