



REPUBLIC OF KENYA



**Mukhanya & another v Wekesa (Environment and Land Appeal 17 of 2020)
[2024] KEELC 7455 (KLR) (24 October 2024) (Interim Judgment)**

Neutral citation: [2024] KEELC 7455 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL 17 OF 2020
EC CHERONO, J
OCTOBER 24, 2024**

BETWEEN

MARTIN SIMIYU MUKHANYA 1ST APPELLANT

JOSEPH NYONGESA MUKHANYA 2ND APPELLANT

AND

MULONDANE KABUCHANGA WEKESA RESPONDENT

*(Being an appeal against the award of the Bumula Land District
Tribunal and the Provincial Land Disputes Appeal Tribunal vide case
no. 23 of 2008 and as adopted in LDT No. 1 of 2009 on 18/3/2009)*

INTERIM JUDGMENT

1. The appeal herein relates to the adoption of an award by Bumula District Land Disputes Tribunal and Provincial Land Appeal Committee sitting at Kakamega on 18/3/2023.
2. The Appellant was aggrieved and preferred the present appeal on the following grounds of appeal;
 - a. The Tribunal Elders erred in entertaining the dispute over registered land under the Registration of Land Act Cap 300 when they did not have jurisdiction.
 - b. The tribunal exceeded its jurisdiction in entertaining a land matter under the Registered Land Act, Cap 300.
 - c. Decision made was contrary to the principles of the Land District Tribunal Act
3. As a first appeal court, the mandate of this Court under section 78 Civil Procedure Act and order 42 rules 24 – 26 Civil Procedure Rules is to re-consider, re-hearse and re-evaluate the record and thereafter come up with independent findings and conclusion as to the facts, evidence and the law. This power



was restated in the case of; Abok James Odera t/a AJ Odera & Associates vs. John Patrick Macharia & Co Advocates. (2013) eKLR

4. The brief facts of this dispute is that the Respondent herein filed a case before the Bumula District Land Disputes Tribunal where he alleged that he was the beneficial owner of 2 acres forming part of Land Parcel No. West Bukusu/ South Mateka No. 1115 having purchased it from the Respondents herein at a consideration. Upon determination of the dispute, the Tribunal in its decision awarded the Respondents herein the said 2 acres. Being aggrieved by the Tribunal's decision, the Appellant preferred an appeal to the Western Provincial Appeals Committee at Kakamega which dismissed the Appellants appeal and ordered for the implementation of the Bumula District Land Disputes Tribunal award.
5. The Respondent herein, through a chamber summons dated 7th January, 2009 sought to have the award of the provincial tribunal adopted as an order of the court in Bungoma Chief Magistrate LDT No. 1 of 2009. The Chief Magistrate court read and adopted the award on 18/3/2009 making it a judgment of the court. Being aggrieved by the proceedings as summarized above, the Appellants preferred this appeal.
6. When this appeal came up for directions, the parties agreed to have it canvassed by way of written submissions. The Appellants filed their submissions dated 14/5/2024 while the Respondent filed theirs dated 12/7/2024.
7. The Appellants in their submissions argued that the two tribunals lacked jurisdiction and as such, their respective decisions ought to be set aside/reversed. Reliance was placed in the case of; Johnathan Wafula Mbinga vs. Kabaca Wabwile Wekesa (2021) eKLR and Peter Atambo Magoya vs. Stella Osebe (2019) eKLR.
8. The Respondent in his submission contends that the issue for determination before the land district Disputes Tribunal was the question of sale of land transaction, existing land boundaries, trespass to land and rights over land. As such, he argued that the Land district Disputes Tribunal was clothed with jurisdiction to determine the question before it.

Legal Analysis and Decision.

9. I have carefully considered the record of appeal, the rival submissions by the parties and the relevant law and find that the single issue for determination is whether Bumula District Land Disputes Tribunal acted ultra vires (outside its jurisdiction).

Section 3(1) of the Land Disputes Tribunal Act CAP 303 A(repealed) provides as follows:

“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.”

10. The court record shows that the Respondents claim before the Bumula District Land Disputes Tribunal was for 2 acres forming part of Land Parcel No. West Bukusu/ South Mateka No. 1115 which the Respondent claimed to have purchased from the Respondents. The Respondents on their part alleged that despite purchasing the said portion of land, the Appellants destroyed the set boundaries



and sub-divided the parcel of Land into the following resultant parcels; Land Parcel No. West Bukusu/ South Mateka No. 5185,5186 &5187 leaving him with nothing. The award of the Bumula LDT was to the following extent;

“The Claimant is awarded his two (2) acres from the three objectors.”

11. The Provincial Land Dispute Appeals Tribunal on the other hand in upholding the Respondents claim issued the following award inter alia;

“The parties invite the district surveyor to implement the order and share costs...the Courts executive officer to sign the transfer documents.”

12. From the foregoing, it is clear that the said dispute was primarily a dispute pertaining to ownership of land arising from an alleged sale and purchase between the Appellants and the Respondent. Evidently, the provisions of Section 3(1) of the Land Disputes Tribunals Act NO. 18 of 1990 (now repealed) did not include jurisdiction to deal with issues of determination of title to or ownership of registered land. In *M’Marete Vs 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.”

13. The Supreme Court of Kenya (SCK) in *Republic –vs-Karisa Chengo and 2 Others* Petition No. 5 of 2017 restated the same position and held inter alia;

“...As we know, jurisdiction goes to the root of any litigation. This position was forcefully reiterated in the locus classicus decision of Nyarangi, JA in *The Owners of Motor Vessel Lilian “S”-VS-Caltex Oil Kenya Ltd* (1989) KLR 1 that “jurisdiction is everything.” Without it a court cannot make a move. Lack of jurisdiction thus renders a court’s decision void as opposed to it being merely voidable. When an act is void, it is a nullity ab initio.”

14. In *Kimote Musau-vs-Makumi Muluva Muthwethau & 2 others* (2015) eKLR, the Court of Appeal, stated, inter alia;

“...Indeed the tribunal did not have power to order transfer or registration of land and on this score alone, we find that it made this order ultra vires its jurisdiction.”

15. In view of the foregoing, I find that this Appeal has merit and I allow the same in the following terms:

- a. The decisions of the Provincial Land Dispute Appeals Committee and the Bumula Land Disputes Tribunal are hereby set aside.
- b. Parties shall bear their own costs in the instant Appeal and costs in the proceedings before the Tribunal and Appeals Committee.

16. It is so ordered.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 24TH DAY OF OCTOBER, 2024.



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HON.E.C CHERONO

JUDGE

In the presence of;

1. Mr Wamalwa R for Appellant for Appellant.
2. Mr. Juma Waswa H/B for Masika for Respondent.
3. Bett C/A

