



REPUBLIC OF KENYA



**Langat v Registrar of Lands Nakuru & 3 others (Environment & Land Case 253 of 2013) [2023] KEELC 15960 (KLR) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15960 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 253 OF 2013  
A OMBWAYO, J  
FEBRUARY 23, 2023**

**BETWEEN**

**ERASTUS K LANGAT ..... PLAINTIFF**

**AND**

**REGISTRAR OF LANDS NAKURU ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND & ADJUDICATION OFFICER NAKURU ... 2<sup>ND</sup> DEFENDANT**

**DISTRICT SURVEYOR NAKURU ..... 3<sup>RD</sup> DEFENDANT**

**SAMWEL KIPROTICH TOWETT ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. In further amended plaint filed on 27<sup>th</sup> June 2022, Selestine Chepkemoui Mutai suing as the legal representative of the estate of Erastus K Langat claims to be the owner of land parcel number Boma 85 plot No.365 now subdivided into plots Nos Nakuru/Olenguruone/Cheptuech/plot No.596, 595, 593, 502, 665, 243, 591, 594, 598, 589, 242, 709 and 708 which is now further subdivided into 831 and 830. The plaintiff contends that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> defendants conducted adjudication on her parcel of land illegally and fraudulently and wrongfully subdivided her parcel of land and created various titles which were issued to other people leaving the plaintiff with 9 acres only instead of 70 acres. There has existed a dispute before the Olenguruone District Land Tribunal and the dispute was determined in favour of the plaintiff. The Provincial Appeals Committee Rift Valley overturned the award. The 4<sup>th</sup> defendant has threatened to evict her.
2. The plaintiff prays for judgment in terms of an order of rectification of sub-divisions and titles issuance on plot number 365 now plot numbers 591,592, 593,594,595,596, 243, and 665. Moreover the plaintiff prays for nullification of all proceedings in the Olenguruone Land Disputes Tribunal and Rift Valley Land Disputes Appeals Committee and the Molo Senior Magistrate Court.



3. The plaintiff further prays for an order of permanent injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants from further subdividing, issuing titles and interfering with plaintiffs peaceful, quiet possession and use on his plot No. 591, 592, 593, 594, 595, 596, 243 and 665 plus costs of the suit.
4. The 4<sup>th</sup> defendant denies any wrong doing and avers that he has never been in possession or occupation of the suit property measuring 70 acres. The 4<sup>th</sup> defendant avers that parcel Number Nakuru/Olenguruone/Cheptuech/589 measuring 6 acres was purchased from one John Kipkirui Moi vide a sale agreement dated 17<sup>th</sup> March 1991. The 4<sup>th</sup> defendant admits the plaintiffs' averment on the Land Dispute Tribunal but adds that the decision of the Land Dispute Tribunal was overturned by the decision of the Rift Valley Land Dispute Appeals Committee and the plaintiff did not take any further action. The 4<sup>th</sup> defendant avers that this court had no jurisdiction to hear and determine this matter as court of first instance but as an appellate court since the issues herein have already been read and determined in Land Dispute Tribunal in case No. 2 of 2004 and Land Dispute Appeals Committee in case No. 33 of 2005 and Molo PMCC No.3 of 2004.
5. When the matter came up for hearing PW1, Celestine Kepkenoi Mutai stated that Erastus K Langat is her late husband who is deceased. She produced a grant of the letters of administration ad litem. She further relied on her written statement that was adopted as evidence in chief.
6. PW2, Joseph Marindany who resides in the land of Erastus Langat at Oleguroine also relied on his statement dated 3/6/2022. He testified that Erastus was given land number 365. He was given by the Government during the colonial times. The land was subdivided by the surveyor and given to other people including Samuel Kiprotich Koech.
7. DW1, the 4<sup>th</sup> defendant on his part asked the court to adopt his statement as evidence in chief and testified that his title is number Nakuru/Olenguruone /Cheptuech/589. They have been in and outside court in respect of the land. This was case number 2 of 2004. The tribunal made an award that the land was theirs. The plaintiff won the case at the Tribunal. The defendant appealed to Appeals' Committee and the appeal was allowed. They took the award to the lower court Molo and the award was adopted as the judgment of the court. His parcel of land is 589. 591 is owned by Tabradia Chore . 592 is owned by a Peninah . 593 belongs to Josia Koech. 594. There is an eviction order and the said eviction was done legally. The parcel of land was acquired legally. They have obtained title legally and even secured a loan of Kshs100, 000/= using the title as security.
8. I have considered the submissions on record filed by the plaintiff and do find that the issues before me were litigated in Olenguroine Land Dispute Tribunal No.2 of 2004 which culminated in Rift Valley Provincial Appeals Committee Appeals number 33 of 2005 and Molo PMCC No.3 of 2004. The final decision was that made by the Provincial Appeals Committee Rift Valley that the appellants (defendant) are at liberty to occupy their legal parcels of land as per their title deeds without any nature of disturbance from the respondent and his family or agents whatsoever. The plaintiff's family did not appeal as required by law.
9. There was a mechanism for appeal established under the *Land Disputes Tribunal Act* (Repealed) (CAP 303A) that granted a right to an aggrieved party to the Tribunal's decision to make an appeal within 30 days after delivery of the decision. Section 8(1) states that:

“Any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated.



10. The defendant's family appealed to the Appeals' Committee and won the appeal hence the decision of the Molo Land Disputes Tribunal was overturned. It was trite law that a party aggrieved by the decision of the Appeals Committee could under Section 8(9) appeal to the High Court on point of Law within sixty (60) days of the decision of the Appeals' Committee. This provision of the Act is in the following terms: -

Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within sixty days from the date of the decision complained of: Provided that no appeal shall be admitted to hearing by the high Court unless a judge of that Court certified that an issue of law (other than customary law) is involved." A question of customary law shall for all purposes under this Act be deemed to be a question of fact."

11. The decision of the appeals committee was adopted by court as a judgment of the court and a decree issued hence it cannot be challenged by way of plaint. Section 7 (10 and (2) of the Land disputes Tribunals Act provides that :-

7.

- (1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal.
- (2) The court shall enter judgement in accordance with the decision of the Tribunal and upon judgement being entered a decree shall issue and shall be enforceable in the manner provided for under the *Civil Procedure Act*.

12. The plaintiff's family should have approached the High Court by way of an appeal as it then had jurisdiction to hear the appeal from the Appeals Committee but not to approach this court by way of plaint.

13. *Republic v Land Dispute Tribunal, Bahati & another; Peter Karani Nduku (Interested Party) Ex parte Jacob Kipkurui Konga & another* [2020]

It is evident that the Tribunal heard and determined the dispute in 2006 and that the Magistrates Court adopted the award as judgment in 2008 while the Appeals Committee dismissed the applicants Appeal in 2009. Upto the time the appeal was dismissed the *Land Disputes Tribunals Act* (Repealed), had not been repealed and was in force. Hence the procedure that ought to have been followed in resolving the dispute was the one laid out under the *Act*....if he was not satisfied with the decision of the Appeals Committee, he ought to have filed an appeal against the committee's decision if a point of Law was involved in the High Court. He did not and although the decision in the appeal was given on 17<sup>th</sup> November 2009 the applicant only initiated these proceedings on 27<sup>th</sup> March 2019 when he filed the application for leave. It was not explained why it took the applicant over 9 years from the date the appeal to the Provincial Appeals' Committee was dismissed to seek to bring these proceedings. The delay was inordinate and could only have been an afterthought. I view these proceedings as a fishing expedition on the part of the applicant in the hope that he could somehow make a catch. The Courts do not work in that manner as their solemn duty is to interpret and apply the law the quest of doing justice to the parties who come before them.

I have said enough to demonstrate that the instant application was defective for having been brought out of time, was unmeritorious as the applicant failed to exhaust the applicable



procedure under the *Land Disputes Tribunals Act*(Repealed), and that the failure to enjoin the Magistrates Court that adopted the decision of the Tribunal and which the Applicant seeks to have quashed was a fatal omission.”

14. The claim before this court is framed as an invitation for the court to exercise its jurisdiction as a court of 1<sup>st</sup> instance and yet it has jurisdiction to exercise its powers as an appellate court from the decision of the Appeals’ Committee.
15. I do find that the court has no jurisdiction to grant the orders sought as there exists a judgment and decree of a court and that the suit is bad in law and is dismissed with costs.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA EMAIL AT NAKURU THIS 23<sup>RD</sup> DAY OF FEBRUARY 2023.**

**A O OMBWAYO**

**JUDGE**

