



Case Number:	Civil Appeal 55 of 2010
Date Delivered:	20 Nov 2015
Case Class:	Civil
Court:	Environment and Land Court at Malindi
Case Action:	Judgment
Judge:	Oscar Angote
Citation:	Samuel Kalama Nzaro v Nzaro Majaliwa Lugwe (Represented by Kalama Nzaro Majaliwa) [2015] eKLR
Advocates:	none mentioned
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	Kilifi
Docket Number:	-
History Docket Number:	Kaloleni Land Dispute Tribunal Land Case Number 21 of 2001 & Provincial Land Dispute Appeal Committee, Land Appeal No 165 of 2001.
Case Outcome:	Petitions Appeal allowed
History County:	Kilifi
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

CIVIL APPEAL NO. 55 OF 2010

SAMUEL KALAMA NZARO.....APPELLANT

=VERSUS=

NZARO MAJALIWA LUGWE (Represented by

KALAMA NZARO MAJALIWA.....RESPONDENT

J U D G M E N T

1. The appeal before me is in respect of the decision of the defunct Provincial Land Dispute Appeal Committee delivered on 20th September 2010.

2. In the said decision, the Appeal Committee upheld the decision of the Kaloleni District Land Dispute Tribunal in which the Appellant and his family was ordered not to interfere with the disputed parcel of land.

3. In the Memorandum of Appeal, the Appellant has averred that the Tribunal erred in law in failing to satisfy itself on whether it had jurisdiction; that the Tribunal erred in law by failing to make a finding that the alleged representative, Kalama Nzaro Majaliwa, had neither the Power of Attorney nor letters of administration on behalf of Nzaro Majaliwa Lugwe and that the resultant decision was null and void *ab initio*.

4. The Appellant has also faulted the Appeals Committee for re-hearing the case *de novo*.

5. The court directed the appeal to proceed by way of written submissions.

6. The Applicant's counsel submitted that the Tribunal, together with the Appeals Committee dealt with the issue of ownership of the suit land; that the Tribunal and the Appeals Committee had no jurisdiction to deal with the issue of ownership of land and that the actions of the Tribunal and the Appeals Committee were ultra vires, null and void *ab initio*.

7. Counsel submitted that in any event, the alleged representative of Nzaro Majaliwa Lugwe had no power of attorney or letters of administration to enable him file the disputes.

8. Instead of hearing the appeal, counsel submitted that the Appeals Committee heard the matter *de novo*.

9. The Respondent did not file his submissions.

10. The proceedings in the Kaloleni Land Dispute Tribunal shows that the Plaintiff was Nzaro Majaliwa Lugwe while the Defendant is the current Appellant.

11. In the proceedings, the then Plaintiff informed the Tribunal that the land in dispute belonged to his grandfather. It was his evidence that he was surprised when he learnt that the Appellant herein was claiming that the suit property belonged to his (the Plaintiff's) father.

12. The said Nzaro Majaliwa Lugwe called witnesses before the Tribunal who all said the land belonged to Mr. Nzaro and not the Appellant's clan.

13. The Appellant in this case informed the Tribunal that indeed the land in dispute belonged to his grandfather and not the Plaintiff's family.

14. After hearing the parties and their witnesses, the Tribunal made an award in favour of Nzaro Majaliwa Lugwe, represented by the Respondent as follows:

“The defendant (Appellant) says he is related to Plaintiff and his grandfather Masha was son of Lugwe. In consideration Tribunal determine their award to the Plaintiff Mr. Nzaro Majaliwa being the rightful owner of the shamba and his brother Chigwado and others.”

15. One of the reasons that the Tribunal gave for its decision was that the Appellant's father was given land somewhere else. The Tribunal therefore went ahead to confer ownership of the suit property to the Respondent.

16. The Appellant herein then filed an appeal against the decision of the Tribunal with the Coast Provincial Appeals Committee.

17. Instead of dealing with the Appeal by reviewing the evidence that was given at the Tribunal, the Appeals Committee started the matter *de novo* by hearing the Appellant and the Respondent and allowing the parties to cross examine each other.

18. While dismissing the Appeal, the Committee stated as follows:

“The Appeal is dismissed. The disputed land is the property of the Respondent. The Appellant, his family or agents should stop interfering with the disputed land. The decision of the District Tribunal Kaloleni LND/KAL.21/2001 is upheld.”

19. It is obvious that both the Tribunal and the Appeals Committee dealt with the issue of ownership of the suit property contrary to the jurisdiction that was conferred to them by the Land Disputes Tribunal Act (repealed).

20. The jurisdiction of the Land Disputes Tribunals was limited by virtue of Section 3(1) of the Act to disputes relating to division of, or the determination of boundaries to land; a claim to occupy or work land or trespass to land.

21. There is a long chain of authorities by the High Court and the Court of Appeal holding that where the dispute relates to ownership of land, the Land Disputes Tribunal had no jurisdiction to deal with such

a matters.

22. The jurisdiction to deal with disputes relating ownership of land remained with the Magistrates courts and the High court.

23. Consequently, I find and hold that the Kaloleni Land Disputes Tribunal and the Coast Provincial Appeals Committee did not have jurisdiction to deal with the dispute that was before them. They should have referred the dispute to court.

24. Having acted ultra vires, their decisions cannot stand.

25. For those reasons , I allow the Petitions Appeal and set aside the decision of Kaloleni Land Dispute Tribunal Land Case Number 21 of 2001 and Provincial Land Dispute Appeal Committee, Land Appeal No 165 of 2001.

26. Each party to bear his own costs.

Dated and delivered in Malindi this **20th** day of **November** 2015.

O. A. Angote

Judge



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