



Case Number:	Environment and Land Civil Appeal E11 of 2021
Date Delivered:	28 Apr 2022
Case Class:	Civil
Court:	Environment and Land Court at Nakuru
Case Action:	Judgment
Judge:	Anne Omollo
Citation:	Harrison Maina Kariuki & 2 others v Jane Waithera & another [2022] eKLR
Advocates:	Mr. Maragia for the Appellants
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Nakuru
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal allowed
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAKURU**

**ELC CIVIL APPEAL NUMBER E11 OF 2021**

**HARRISON MAINA KARIUKI.....1<sup>ST</sup> APPELLANT**

**JOHN KIMANI KARIUKI.....2<sup>ND</sup> APPELLANT**

**ISAAC NGANGA KARIUKI.....3<sup>RD</sup> APPELLANT**

**VERSUS**

**JANE WAITHERA.....1<sup>ST</sup> RESPONDENT**

**MUNGAI MUTEMBEI.....2<sup>ND</sup> RESPONDENT**

**JUDGEMENT**

**INTRODUCTION**

1. By the Memorandum of Appeal dated 23<sup>rd</sup> June, 2000, the Appellants Appeal against the whole of the award of the Provincial Land Disputes Appeals Committee, Central Province, Nyeri, (hereinafter referred to as “Appeals committee”) in Tribunal Case No. 36 of 2000 delivered on 10<sup>th</sup> May, 2000. The grounds of Appeal are:

*a) The learned appointed elders erred in fact and in law in failing to take into consideration the fact that the applicants are the representatives of the estate of KARIUKI KAGARA who was allocated the plot No. Nyandarua/ South Kinangop/245.*

*b) The appointed elders erred in fact and in law by failing to take into consideration the fact that the respondent herein failed to produce the sale agreement before the elders which could support her allegations and the receipts produced does not state which plot they were purchasing.*

*c) The appointed elders erred in law and in fact by failing to take into consideration the fact that the 1<sup>st</sup> Respondent stated that she never knew the transaction of sale between our father and her husband and that she came to know when her husband died which the evidence could not be relied on.*

*d) The appointed elders erred in fact and in law in failing to take consideration the fact that the said Jane Waithira did not produce her letter of administration to show that she is the legal and/or the representative of the Estate of her husband whom she alleges she purchased a portion of land.*

*e) The appointed elders erred in law and in fact in failing to take into consideration the fact that we should get a portion of 3.375 HA and JANE WAITHIRA MUNGAI AND MUNGAI MUTEMBEI do get a portion of 2.225 Ha out of plot No. Nyandarua/South Kinangop/245 while the whole parcel of land is only six(6) acres as per the certificate of official search.*

*f) The appointed elders erred in fact and in law in failing to take into consideration the fact that there is no trace in records to show that there was any application made before the Land Control Board held on 27<sup>th</sup> July, 1984 and that this was only a fraud*

*made my (SIC) the first Respondent's husband.*

*g) The appointed elders erred in fact and in law in failing to consider that the consent which was produced before them was obtained from the office of the president which the consents are never obtained or issued by the office of the president. The said consent was obtained fraudulently and the same will be challenged before the hearing of this Appeal.*

*h) The appointed elders erred in law by failing to consider that certificate of confirmation of grant was issued to HARRISON MAINA KARIUKI but the Respondents did not raise any objection if they had purchased a portion of land as they claim.*

*i) The appointed elders erred by not considering that our father had his family and he could inform them during the transactions of sale. The Respondents could bring the witnesses to testify before them.*

2. The Appellants prays that the award of the elders sitting at Nyeri be set aside and the Appeal be allowed.

### **FACTUAL BACKGROUND**

3. The genesis of this Appeal is the determination of the Nyahururu District Land Dispute Tribunal in case number 30 of 1999 regarding the ownership of land parcel No. NYANDARUA/ SOUTH KINANGOP/245. After the tribunal made its decision, the Appellants appealed to the Provincial Land Disputes Appeals Committee in Tribunal Case No. 36 of 2000 whose decision was delivered on 10<sup>th</sup> May, 2000 and the following order made:

*The Executive Officer in the SRM's Law Court Nyandarua is requested to sign the necessary documents to enforce the sub-division of Land No. NYANDARUA/ SOUTH KINANGOP/245. New No's 3243 and 3244 as follows:*

*1) New No. 3243 Kagara's family John Kimani Kariuki and 2 others be given 3. 375 Ha*

*2) New No. 3244 Jane Waithera Mungai and Mutembei be given 2. 225 Ha.*

*The District Surveyor Nyandarua District is requested to carry out the sub-division of the land in question in view of the fact that the sub-division ought to have been effected on 5. 4. 93 which is very unfair to the Appellants considering the delay and inconvenience caused to the Appellants by the Respondents.*

4. This appeal was initially filed in the High Court on 23<sup>rd</sup> June 2000 and dismissed on 30<sup>th</sup> October, 2009 for want of prosecution. The Court of Appeal on 1<sup>st</sup> November, 2017 reinstated the Appeal. On 29<sup>th</sup> April, 2021, this suit was transferred to this court for hearing and determination.

5. The Appeal came up for directions on 28<sup>th</sup> June, 2021 when counsel for Appellant appeared. Counsel for Respondent was absent. Directions were given that the Appellant files the record of Appeal within 30 days.

6. On 16<sup>th</sup> September, 2021 counsel for the Appellant appeared and confirmed that the record of Appeal had been filed and directions were issued that the Appeal be canvassed by way of written submissions. The Appellants were further directed to file and serve their submissions on the Respondent and upon service, the Respondents to file their submissions within 30 days.

7. On 29<sup>th</sup> November, 2021 the matter was mentioned to confirm filing of submissions but parties were absent.

8. On 27<sup>th</sup> January, 2022 counsel for the Appellant appeared, their submissions were not ready and parties were given a further mention date.

9. On 10<sup>th</sup> February, 2022 counsel for the Appellant appeared, confirmed that he had filed the Appellants submissions. He also confirmed that the Respondent has been served with the mention notice and that the affidavit of service was on record.

10. The Appeal was then reserved for judgment.

**ISSUES FOR DETERMINATION.**

11. The Appellants filed their submissions on 9<sup>th</sup> February, 2022. The Respondents did not file their submissions.

12. The Appellants have condensed the grounds of Appeal into the following 4 issues for determination:

*a) Whether the District Land Dispute Tribunal as well as the provincial Land Dispute Appeals Tribunal (sic) had jurisdiction to determine the issue of sale of land.*

*b) Whether the District Land Dispute Tribunal as well as this Provincial Land Disputes Appeals Tribunal (sic) had jurisdiction to determine the issue of ownership.*

*c) Whether the District Land Dispute Tribunal as well as this Provincial Land Disputes Appeals Tribunal (sic) had jurisdiction to determine the issues concerning land in which had been registered and where the said registered owner had died and there existed an ongoing or concluded succession cause.*

*d) Whether the District Land Dispute Tribunal as well as this Provincial Land Disputes Appeals Tribunal (sic) based its judgment on valid and reliable evidence upon having and if it occurred to the said Tribunal that the Respondents had jumped ship to obtaining titles to land.*

13. In my view, at the heart of this appeal is a determination of the question whether the Nyahururu Land Disputes Tribunal and by extension, the Provincial Land Dispute Appeals Committee had jurisdiction to entertain the dispute and the appeal.

14. My finding on this question will determine the Appeal and it shall not be necessary to address the remaining grounds of Appeal.

**THE APPELLANT'S CASE.**

15. On the question of jurisdiction, the Appellants have canvassed ground 2, 3 and 9 of the Memorandum of Appeal together. The Appellants submits that these 3 grounds answer to the question whether the Provincial Land Dispute Appeals Committee had jurisdiction to determine the issue of sale of land.

16. It is their submission that section 3(1) of the Land Disputes Tribunal Act (now repealed) limits the jurisdiction of the tribunal. The said section provides as follows;

*“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.”*

***shall be heard and determined by a Tribunal established under section 4***

17. It is the Appellants submission that the dispute between them and the Respondents arose from an alleged sale of land and therefore, the Provincial Land Dispute Appeals Committee lacked jurisdiction.

18. The Appellants also submit that the dispute before the Provincial Land Dispute Appeals Committee was in respect of ownership

of the suit land and the award was therefore unlawful.

**ANALYSIS AND DETERMINATION.**

19. I have considered the proceedings before the Provincial Land Disputes Appeals Committee, the evidence tendered before it, the award, the grounds of Appeal in this Appeal and the submissions filed in respect of this Appeal. I have also considered the relevant statutes and jurisprudence on the key issues in this Appeal.

20. A perusal of the plaint filed before the Nyahururu Land Disputes Tribunal reveals that the Plaintiff (now Respondent) sought orders that the Defendants (now Appellants) transfer four acres of the suit land to the Plaintiff.

21. The basis for the said prayer is that the Plaintiff's deceased husband bought a parcel of land from the Defendants' deceased father and that the Defendants had refused to transfer the suit parcel to the Plaintiff. The husband of the Plaintiff is one Mungai Gikara (deceased). The father of the Defendants is one Kariuki Kagara (deceased).

22. The Nyahururu Land Disputes Tribunal made an award and the Appellants appealed from that award to the Provincial Land Disputes Appeals Committee. The finding of the Provincial Land Disputes Appeals Committee was that the Respondent's husband purchased 5.5 acres of land from Kariuku Kigara at a price of Kshs. 110,000 and ordered that 2.225 Ha be given to the Respondents.

23. In essence, the Provincial Land Disputes Appeals Committee upheld the decision of the Land Disputes Tribunal.

24. The Appellants have referred to the decisions in *Republic Vs Land Disputes Tribunal Taveta [2013] eKLR* and the decision in *Boniface Chege & 33 Others Vs Attorney General and 4 Others (Nyahururu ELC Petition No. 9 of 2017)* in support of their submissions that the tribunals had no jurisdiction to determine a dispute relating to ownership.

25. There is no doubt that the Provincial Land Disputes Appeals Committee determined a dispute between the Appellants and the Respondents. The said dispute was primarily a dispute pertaining to ownership of land arising from an alleged sale and purchase between two persons. As at the time of hearing the dispute, the two persons were deceased and the proceedings before the Tribunal and Appeals Committee involved their legal representatives.

26. In *Joseph Malakwen Lelei & another Vs Rift Valley Land Disputes Appeals Committee & 2 others [2014] eKLR* the Court of Appeal restated the law relating to jurisdiction of Land Disputes Tribunal and states as follows:

*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.... 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....*

27. 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.”*

28. Bearing in mind the provisions of Section 3 (1) of the Land Disputes Act (now repealed) and the judicial decisions referred to in the preceding paragraphs, it is evident that the Land Disputes tribunal and by extension the Provincial Land Disputes Appeals Committee exceeded their jurisdiction.

**DISPOSITION.**

29. 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 Nyahururu 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.*

30. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 28<sup>TH</sup> DAY OF APRIL, 2022.

L. A. OMOLLO

JUDGE

In the presence of: -

Mr. Maragia for the Appellants

No appearance for the Respondents

Court Assistant; Jeniffer



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