



REPUBLIC OF KENYA



KENYA LAW
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**Ntimama v Ololchike (Environment & Land Case 81 of 2017)
[2023] KEELC 18068 (KLR) (13 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18068 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 81 OF 2017**

**CG MBOGO, J
JUNE 13, 2023**

BETWEEN

NAMINTI NTIMAMA PLAINTIFF

AND

STANLEY MBIRIKA OLOLCHIKE DEFENDANT

JUDGMENT

1. The plaintiff filed a plaint dated September 22, 2014 seeking judgment against the defendant for: -
 - a. A declaration that there was an error in the proceedings and verdict of the Narok Division Lands Dispute Tribunal vide case number 1 of 2010 which verdict was adopted as a judgment in Narok Senior Principal Magistrate Misc Land Case No 14 of 2010, which referred the disputed land as P/No Narok Cis/Mara-Kisiriri/197 instead of P/No Narok Cis/Mara-Kisiriri/191.
 - b. An order directing the defendant to carve out and transfer three (3) acres out of P No Cis/Mara-Kisiriri/191 to the plaintiff.
 - c. Costs of the suit.
2. In the plaint, the plaintiff stated that she filed a reference in the Narok Lands Dispute Tribunal Case No 1 of 2010 which was heard, and a verdict given. The said decision of the Tribunal was adopted as a judgment of this court on May 3, 2010 by the Senior Principal Magistrate. That all along during the hearing of the case before the Tribunal, the land was referred to as Narok Cis/Mara-Kisiriri/191 but in typing the proceedings, the Tribunal indicated as Narok/Cis-Mara/197 which parcel does not belong to the defendant.
3. The plaintiff further stated that the ensuing decree was to be executed against plot No Narok Cis-Mara/Kisiriri/197 which the plaintiff did not have a claim and that she is aware that the court adopted



the award of the Tribunal as a judgment of the court had no powers to rectify the mistake as all attempts were opposed by the defendant.

4. The defendant filed his defence dated March 3, 2015. The defendant while denying the contents of the plaint stated that the proceedings before the Tribunal were defective and it involved a parcel of land that was owned by a third party. Also, that the plaintiff is not entitled to 3 acres out of parcel No Cis Mara/Kisiriri/191 and that he is the sole and absolute owner of the said parcel of land.
5. In conclusion, the defendant stated that the proceedings before the Narok Division Land Disputes in case No 1 of 2010, the award and the adoption by this court were null and void.
6. This matter proceeded for hearing on March 28, 2023. The plaintiff while adopting her witness statement dated September 22, 2014 testified that together with the defendant, they were blessed with two children who are Philemon Kiamas and Henry Saitoti. It was her evidence that she filed a Tribunal case on behalf of the children since they were young and that it was the defendant who gave her the land but later took it away from her. That Cis-Mara/Kisiriri/197 belongs to Oloogonyo Ole Kenga and that the dispute between her and the defendant at the Tribunal concerned parcel number 191. Also, that the Tribunal erred in indicating the land as plot No 197. The plaintiff produced exhibits marked as PEX No 1-4 respectively.
7. On cross examination, the plaintiff testified that she is the wife of the defendant but does not have the evidence to prove marriage. She agreed that Cis-Mara/Kisiriri/191 belongs to the defendant and that the dispute before the Tribunal referred to Cis-Mara/Kisiriri/197 which was an error. She further admitted that she did not approach the Tribunal to rectify the error in the number of the parcel of land.
8. The plaintiff further testified that she has brought the case on behalf of her children but does not have the evidence that the defendant is the father of her children.
9. On re-examination, the plaintiff testified that she was given the suit land by the defendant and the Tribunal as well. Further, that she could not go back to the Tribunal for rectification of the error as she is illiterate and when she attempted to go back to the Tribunal it was already defunct. The plaintiff closed her case.
10. The defendant while adopting his witness statement dated March 3, 2014 and filed in court on March 3, 2015 produced the documents DEX Nos 1-5.
11. On cross examination, the defendant testified that he does not know the plaintiff but admitted that they had a case before the Land Disputes Tribunal. He said that the plaintiff wanted land parcel number 197 and not 191. Further, that he did not inform the Tribunal that parcel number 197 was not his. The defendant further testified that it was the plaintiff who indicated to the Tribunal that the parcel she was seeking was number 197. With regard to Philemon Kiamas, the defendant said that he knew him but that he is not his son and neither is Henry Saitoti and that he did not mention the issue of the children before the Tribunal.
12. The defendant further testified that he did not allocate his land to any person but that the Tribunal allocated the plaintiff 3 acres of land, and he was dissatisfied with the award.
13. The plaintiff filed written submissions dated April 13, 2023. The plaintiff raised three issues for determination as listed below: -
 - a. Whether this honourable court has jurisdiction to hear and determine this matter.
 - b. Whether the plaintiff has requisite locus in this suit.



- c. Whether the plaintiff should be granted the prayers sought on the plaint.
14. On the first issue, the plaintiff submitted that Section 13 (4) of the *Environment and Land Court Act* confers this court with jurisdiction to hear matters which were initially before local Tribunals and other subordinate courts. As such, this court has jurisdiction to hear and determine this matter. The plaintiff relied on the case of *National Land Commission versus Afrison Export Import Limited & 10 Others* [2019] eKLR and submitted that the error which is apparent on the Tribunal proceedings has an effect of denying the plaintiff an enjoyment of the court decree which was issued on November 20, 2018 which mistake is not the plaintiff's.
 15. The plaintiff further submitted that the complaint she lodged at the Land Dispute Tribunal pertained to a claim to occupy land therefore the Tribunal had jurisdiction to hear and determine this suit and no preliminary objection was raised with regards to the Tribunals jurisdiction by the defendant.
 16. On the second issue, the plaintiff submitted that she has the requisite locus to prosecute the matter before this court as she obtained judgment contained in the Tribunal Case Number 1 of 2010, SPM Misc Case No 14 of 2010 and the decree issued on November 20, 2018 and the error on the proceedings can be rectified by the plaintiff since she filed the complaint before the respective forums.
 17. On the third issue, the plaintiff submitted that there is no other forum available for the plaintiff to rectify an error arising from the Land Tribunal proceedings besides this court as the court which issued the decree does not have jurisdiction since its role was to adopt the judgment of the Tribunal as the judgment of the court. The plaintiff further submitted that under Section 3 (9) of the *Land Disputes Tribunals Act* Cap 303A (now repealed), the Magistrates' Court only had jurisdiction to implement and/ or execute the decisions of the Tribunal without re-opening the case and could not therefore review a decision of the tribunal.
 18. In conclusion, the plaintiff submitted that what is before this court is purely a technical error pertaining to the land which was being adjudicated upon by the Narok Land Tribunal. Also, that the defendant has agreed that he does not own Narok/CisMara/Kisiriri/197 but conceded that the plaintiff had filed a complaint against his land which is apparent that there was an error with regards to the subject matter.
 19. The defendant filed his written submissions dated April 5, 2023 and filed in court on April 12, 2023. The defendant raised four issues for determination listed herein below: -
 1. Whether the plaintiff has the necessary locus standi to institute this suit.
 2. Whether or not this honourable court has the necessary jurisdiction to grant the reliefs sought by the plaintiff.
 3. Whether or not this honourable court ought to grant the prayers sought by the plaintiff.
 4. Who should bear the costs of this suit.
 20. On the first issue, the defendant submitted that the plaintiff lacks the necessary locus standi to institute and sustain the instant suit. That the decision of the Narok Division Land Dispute case No 1 of 2010 referred to land title number Cis Mara/Kisiriri/197 which neither of the parties has proprietary interest in and that from the said decision, it is clear that the plaintiff has no interest in the said property, did not file the suit on behalf of her sons and therefore has absolutely no right to institute and sustain the suit at hand.
 21. On the second issue, the defendant submitted that during trial, the plaintiff testified that she knew of the existence of the Appeals Committee, and it follows therefore that the plaintiff being aggrieved by



- the decision of the Tribunal, ought to have appealed against the same to the Appeals Committee within 30 days of the decision. The defendant further submitted that the impugned decision was rendered in the year 2010 and a decree given to that respect on May 4, 2010. That the Land Disputes Tribunal was repealed on August 30, 2011. Further, that upon lapse of the 30 days after the pronouncement of the decision by the Tribunal and issuance of the decree by the subordinate court, the plaintiff acquiesced on her right of appeal.
22. The defendant submitted that rather than filing an appeal against the said decision, the plaintiff opted to file the instant suit whereas her grievances can only be canvassed through an appeal and as such, the jurisdiction of this court can only be invoked upon filing an appeal. For this reason, this court is without the necessary jurisdiction to make pronouncements that would alter the decision of the Narok Division Land Dispute Case No 1 of 2010 that yielded the decree in Misc No 14 of 2010.
 23. On the third issue, the defendant submitted that the proceedings before the tribunal were null and void since the Tribunal lacked the jurisdiction to determine issues of ownership and that it is common ground among the parties that during the proceedings, the parcel of land in question was registered as evidence by the parties. Reliance was placed in the cases of *Republic versus Chairman, Lurambi Land Dispute Tribunal & 2 Others* [2006] eKLR and *Mateo Githua Ngurukie versus Hon Attorney General & 5 Others*, Nyeri High Court Civil Suit No 206 of 1999. In conclusion, the defendant submitted that the suit is devoid of merit and ought to be dismissed with costs.
 24. I have considered the pleadings, evidence tendered by the parties and the written submissions filed by both parties and the issues for determination are as follows: -
 - i. Whether this court has jurisdiction to hear the suit.
 - ii. Whether the plaintiff is entitled to the orders as sought.
 - iii. Who is to bear the costs.
 25. It was the plaintiff's case that there was an error in the verdict arising from the decision of the defunct Narok Land Dispute Tribunal and which the Principal Magistrates' Court adopted as a judgment of the court. It was also the plaintiff's case that she is the wife of the defendant who gave her the land and later took it away from her. That she filed a claim with the defunct Narok Land Dispute Tribunal who awarded her the land and by the time she went back to the Tribunal seeking correction of the error, the said Tribunal was dysfunctional by operation of the law.
 26. On the other hand, the defendant began by informing this court that he did not know the plaintiff but contradicted himself by stating that there was a case between them at the Land Disputes Tribunal.
 27. The subject matter of the suit relates to parcel number Narok/Cis-Mara/191 and which the plaintiff contended that there was an error with the proceedings before the Land Dispute Tribunal that referred to parcel number 197 which no party has proprietary interest in. I have perused the documents produced as evidence. Pex No 3 is a decree issued by the Senior Principal Magistrate on November 20, 2018. The said decree refers to a claim for Land Parcel No Cis-Mara/Kisiriri/191. The proceedings before the Tribunal refer to the case of parcel number Cis-Mara/Kisiriri/ 197.
 28. The defendant in his submissions raised the issue of jurisdiction as the time lapsed for the plaintiff to file an appeal which she ought to have done. On this, I disagree with the defendant for the reason that the plaintiff admitted to an error and the Land Dispute Tribunal being defunct, her only remedy lied in filing the instant suit. If at all, the plaintiff was to file an appeal, it would mean that she was dissatisfied with the decision of the Tribunal which is not the case. She was only seeking correction of an error in the parcel number.



29. In the proceedings before the Tribunal, the parties herein were the same before the Tribunal and I find that the plaintiff has locus to file the instant suit.
30. The jurisdiction of the defunct Tribunals established under the Land Disputes Tribunals Act, Cap 303A was conferred by Section 3(1) of the Act which provided as follows:-

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- (1) Subject to this Act, all cases of 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.

31. A look at the proceedings before the Tribunal shows dispute before the Tribunal revolved around property known as Cis-Mara/Kisiriri/ 197 which the plaintiff claimed as a result of her marriage to the defendant. From the proceedings, and the decree it is manifest that the property referred to was Narok/Cis-Mara/Kisiriri/191 and not Narok/ Cis-Mara/Kisiriri/ 197. Based on the evidence tendered by the parties and on a balance of probabilities, this court is satisfied that the plaintiff is entitled to the reliefs sought.
32. As such, this court enters judgment in favour of the plaintiff in the following terms: -
- i. A declaration is hereby issued that there was an error in the proceedings and verdict of the Narok Division Lands Dispute Tribunal vide case number 1 of 2010 which verdict was adopted as a judgment in Narok Senior Principal Magistrate Misc Land Case No 14 of 2010, which referred the disputed land as parcel number Cis-Mara/Kisiriri/197 instead of parcel number Narok/Cis-Mara/Kisiriri/191.
 - ii. An order is hereby issued directing the defendant to carve out and transfer three (3) acres out of property known as Narok/Cis-Mara/Kisiriri/191 to the plaintiff.
 - iii. In the event that the defendant fails to comply with order ii above, the Deputy Registrar of this court to execute transfer documents hiving off 3 acres from property known as Narok/ Cis-Mara/Kisiriri/191 in favour of the plaintiff.
 - iv. Costs of the suit.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 13TH DAY OF JUNE, 2023.

HON. MBOGO C.G.

JUDGE

13/6/2023

In the presence of:

CA:T.Chuma

