



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MURANG'A

CIVIL APPEAL NO 29 OF 2013

(FORMERLY NYERI HC CIVIL APPEAL NO 178 OF 2010)

(Appeal from the order dated 24/09/2010 in Murang'a

SPM LDT Case No 43 of 2010 – I K Orenge, RM)

MUNGAI MUHIRA.....APPELLANT

VERSUS

1. MURIGI KARUNGA

2. MWANGI KARUNGA.....RESPONDENTS

J U D G M E N T

1. The Appellant herein, **Mungai Muhira**, was the claimant before the **Makuyu Division Land Disputes Tribunal** in its **Case No 8 of 2010**. The Respondents were the defendants. By an award made and read to the parties on 23/03/2010 the Appellant was ordered –

“To sub-divide and transfer the said parcel No. Loc 17/Kamahuha/807 to Murigi Karunga.”

The tribunal also advised the parties of their right of appeal to the provincial appeals committee.

2. The claimant never appealed to the provincial appeals committee within the time stipulated in the law or at all, and the defendants then applied by chamber summons dated 12/07/2010 for an order to adopt the tribunal award as the judgment of the court. That was the application that the lower court allowed on 24/09/2010 and provoked this appeal. In the meantime the lower court issued decree on 01/11/2010. An application to the same court by notice of motion dated 01/11/2010 to stay execution of that decree pending disposal of this present appeal was refused on 08/12/2010.

3. The grounds of appeal appearing in the memorandum dated 18th and filed on 19/10/2010 include –

(a) That the learned magistrate erred in law and fact in not finding that the case **“does not fall under the Land Disputes Tribunal Act in that it pertains to title to land and the Appellant is the registered proprietor.”**

(b) That the learned magistrate erred in law and fact in not finding that the parties were not given a fair hearing by the tribunal notwithstanding its lack of jurisdiction.

4. In his replying affidavit filed in response to the application to adopt the tribunal's award as the judgment of the court the Appellant had apparently challenged the tribunal's jurisdiction, etc. But his challenge was clearly misplaced as the magistrate's court was not the right forum. He should have appealed to the provincial appeals committee, and thereafter to the **High Court** on a point of law if necessary. Alternatively, he could have taken out judicial review proceedings in the **High Court** to challenge the jurisdiction of the tribunal and the award it made. He did none of those things. Instead he chose the wrong forum – the magistrate's court – to challenge the award. That court's function as by law then existing was simply to adopt as its judgment the award of the tribunal once it was clear to it that no appeal as then provided by the law (or other lawful proceedings) was pending.

5. For the same reasons, the present appeal is misconceived. The lower court did absolutely nothing wrong. It merely exercised its mandate under the law to adopt the tribunal's award as its judgment. It could not have questioned the tribunal's jurisdiction. It did not have that

jurisdiction. 6. In the result I find no merit in this appeal. It is hereby dismissed with costs to the Respondents. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 25TH DAY OF MAY 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 31ST DAY OF MAY 2017