



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**ELC APPEAL NO. 41 OF 2013**

LOISE NJERI NGUGI.....APPELLANT

VERSUS

CHARLES KIMANI MUNGAI.....1<sup>ST</sup> RESPONDENT

MOSES NGIGI MUNGAI.....2<sup>ND</sup> RESPONDENT

***(BEING AN APPEAL ARISING FROM THE AWARD OF THE PROVINCIAL LAND DISPUTES TRIBUNAL AT NYERI DELIVERED ON 7<sup>TH</sup> JULY 2011 IN LAND DISPUTES TRIBUNAL APPEAL NO. 17 OF 2005 AND AWARD OF MARAGUA DISTRICT LAND DISPUTES TRIBUNAL CASE NO. 73 OF 2005 GIVEN ON 20<sup>TH</sup> JULY 2005)***

**JUDGMENT**

The dispute herein revolves around land parcel No. LOC 6/GITHEMBE/725 (the suit land) which is registered in the names of **FLORENCE WAMUTHITHI** (deceased) who is the mother to the appellant **LOISE NJERI NGUGI** and step-mother to the respondents **CHARLES KIMANI MUNGAI** (1st respondent) and **MOSES NGIGI MUNGAI** (2nd respondent). The record herein shows that the appellant obtained a grant of letters of Administration intestate with respect to the deceased's Estate on 13th October 1997 in **NAIROBI HIGH COURT SUCCESSION CAUSE No. 1635 of 1997**. It would appear that the grant is yet to be confirmed to-date and no information is forthcoming on why that is the position some 20 years later.

What is clear however is that on 13th July 2005 the respondents moved to the Maragua Land Disputes Tribunal seeking to have a share of the suit land. Their case was that the deceased who was one of the four wives of their late father had been registered as the proprietor of all their father's land and anyone who wanted a share had to go to her and meet the costs of the transfer. They therefore wanted a share of the suit land being utilized by the appellant who was married.

The appellant's case on the other hand was that she was holding that share on behalf of their brother Rufus who had disappeared but would hand over to him if he returned. She added that she had been utilizing the land since 1964.

After hearing the parties, the Tribunal made the following award:-

***“The claimants Charles Kimani Mungai ID 0989018 and Moses Ngigi Mungai ID 16096147 are given a right to occupy land parcel No. LOC 6/GITHEMBE/725 which is registered in the name of their elder mother Florence Wamuthithi Mungai (deceased).”***

That award was made on 20th July 2005 and the parties were notified of the right of appeal within 30 days.

The appellant promptly filed an appeal at the Provincial Land Disputes Appeal Committee at Nyeri being Appeal No. 17 of 2005. After hearing the parties, the Appeals Committee delivered its decision on 7th July 2011 in the following terms:-

***“Plot No. 725 is under the name of Florence Wamuthithi (deceased) and mother of the missing brother Rufus Ngigi Mungai who has never been declared dead. This Tribunal rules that this shamba remains intact but the four children of Silas Mungai Matuyu can continue cultivating the land”.***

Aggrieved by that decision, the appellant filed this appeal originally at the High Court in Nyeri on 5th September 2011 and raised the following grounds:-

***1. That the Provincial Land Disputes Tribunal erred in law in that it purported to deal with L.R No. LOC 6/GITHEMBE/725 and determined the persons to occupy and cultivate the same when they knew that the suit land was registered in the name of Florence Wamuthithi (deceased) and her rights or that of her Estate in respect of the suit property were protected under Section 28 of the Registered Land Act.***

***2. That the Provincial Land Disputes Tribunal erred in law that it purported to make a decision and distribute plot L.R No. LOC 6/GITHEMBE/725 in terms of occupation and ignored the appellant’s plea that the same property was the subject matter of Nairobi High Court Succession Cause No. 1635 of 1997 which is still pending before Court and wherein all the parties before it were involved.***

***3. That the Provincial Land Disputes Tribunal erred in law in that it purported to allow the respondents to occupy and work on the suit property when at the same time found that the suit property was registered in the names of the appellant’s mother and consequently belonged to the deceased Estate.***

***4. That the Provincial Land Disputes Tribunal erred in law in that it failed to deal with the issue raised by the appellant in the Memorandum of Appeal dated 15th August 2005 and failed to give a reasoned judgment and thus arrived at wrong conclusions.***

The appeal has been canvassed by way of written submissions which have been filed by **MWANGI, CHEGE & CO.** Advocates for the appellant and **KAMAU KINGA & CO.** Advocates for the respondent.

I have considered the appeal, the record herein and the submissions by counsel.

This dispute was heard by the Maragua Land Disputes Tribunal (the Tribunal) in accordance with the provisions of the now ***repealed Land Disputes Tribunal Act (CAP 303 A)***. ***Section 3 (1)*** of the said Act provided the jurisdiction of such tribunals in the following terms:-

***“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 in common;***

***(b) a claim to occupy on work land; or***

***(c) trespass to land shall be heard and determined by a Tribunal established under Section 4”.***

In my view, there are two points of law which this Court will determine in this appeal. These are:-

**1. Whether the Provincial Land Disputes Appeals Committee at Nyeri erred in law in determining this dispute when the same was pending at NAIROBI HIGH COURT SUCCESSION CAUSE No. 1635 of 1997.**

**2. Whether the Provincial Land Disputes Appeals Committee exceeded its jurisdiction in determining the persons to occupy and cultivate the suit land which is registered in the names of the deceased and therefore protected under Section 28 of the repealed Registered Land Act now Section 25 of the Land Registration Act 2012.**

I have looked at the proceedings at the Tribunal. All that the appellant told the members was that:-

***“I was advised to file a succession cause for properties belonging to my mother Florence Wamuthithi and Janet Mugure in the Court of law”***

As I have indicated above, part of the record of appeal herein is a copy of a grant of letters of Administration issued to the appellant on 13th October 1997 in respect to the deceased's Estate in **NAIROBI HIGH COURT SUCCESSION CAUSE No. 1635 of 1997**. However, the record does not show that this was brought to the attention of the Tribunal. It is the responsibility of a party seeking to invoke the jurisdiction of a Court or Tribunal to stay proceedings because of the pendency of a similar suit elsewhere to place before that Court or Tribunal evidence to that effect.

Similarly, she did not inform the Provincial Land Disputes Appeals Committee at Nyeri about the **NAIROBI HIGH COURT SUCCESSION CAUSE No. 1635 of 1997**. Her evidence at that Committee was as follows:-

***“Loc 6/Githembe/725 is my mother's land (2 acres). I am the only child of my mother. Respondents are my step brothers. I am living on this land. My step brothers live on their separate shambas. The title deed is in the High Court”***

In those circumstances, both the Tribunal and the Provincial Appeals Committee cannot be accused of determining a dispute that was pending at the High Court when the appellant herself did not address them in those terms and present the relevant evidence. It must be remembered that the Tribunals and Appeals Committees established under **Sections 4 and 8** respectively of the **repealed Land Disputes Tribunal Act (CAP 303 A)** were not comprised of lawyers. The more reason why a party appearing before such forums would have to be more explicit and not leave anything to the intuition of the Tribunals. Indeed even in their submissions before me, none of the counsel have informed the Court of the current status of a succession cause filed almost twenty (20) years ago. While it is not un-usual to have suits pending in our Courts for such long periods, surely a Court is entitled to be apprised of the progress and current status of the same. The bottom line really is that the parties were rather economical with information and both the Tribunal and Appeals Committee were not to blame. That ground therefore fails.

As to whether the Provincial Land Disputes Appeals Committee at Nyeri exceeded its jurisdiction in arriving at the decision that it did, it is now well settled that where the implementation of the decision of the Tribunal or Appeals Committee entails the sub-division or ownership of registered land, then such jurisdiction is not donated by **Section 3 (1) of the repealed Land Disputes Tribunal Act (CAP 303 A)**. In the case of **JOTHAM AMUNAVI VS THE CHAIRMAN SABATIA DIVISIONAL LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL No. 256 of 2002**, the Court stated as follows:-

***“It is clear that the proceedings before the Tribunal related to both title to land and the beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of Section 3 (1) of the Land Disputes Tribunal Act. By Section 159 of the Registered Land Act such a dispute can be tried by the High Court or by the Resident Magistrate's Court in cases where the latter has jurisdiction”***

In my view, to determine whether or not the Tribunal had the requisite jurisdiction to determine the

dispute before it, the Court must be guided by the final decision that was arrived at by such Tribunal. The Court should therefore look beyond what the parties informed the Tribunal and place more emphasis on what the Tribunal finally decided after hearing the parties. Only then can it be concluded, with certainty, whether indeed the Tribunal exceeded its jurisdiction or acted within its mandate. Looking at what both the Tribunal and the Appeal Committee decided after hearing the parties, I am not persuaded that either of them exceeded their jurisdiction by deciding on the ownership of the suit land. As indicated above, the Tribunal confined itself in its award by giving the respondents the

***“.... right to occupy land parcel No.***

***LOC 6/GITHEMBE/725 which is registered in the names of their elder mother Florence Wamuthithi Mungai (deceased)”.***

The Appeals Committee on its part said that:-

***“This Tribunal rules that this shamba remains intact but the four children of Silas Mungai Matuyu can continue cultivating the land”***

No doubt both the Tribunal and the Appeals Committee were alive to the fact that the law did not grant them the jurisdiction to sub-divide the suit land or make any orders regarding its ownership bearing in mind that it is registered land. However, they both recognized that as children of the deceased, all the parties were entitled to occupy and cultivate it. That, in my view, was in conformity with the provisions of **Section 3 (1) of the repealed Land Disputes Tribunal Act** which provided that ***“a claim to occupy or work land”*** shall be determined by such Tribunal. It is also clear from **Section 2 of the repealed Land Disputes Tribunal Act CAP 303 A** that land is defined to mean:-

***“..... agricultural land as defined in Section 2 of the Land Control Act, whether or not registered under the Registered Land Act ....”***

Therefore, the fact that the suit land is registered does not take away the Tribunal’s jurisdiction to determine a dispute which falls within the restriction set out in **Section 3 (1) of the Land Disputes Tribunal Act (CAP 303 A)**. Neither the Tribunal nor the Appeals Committee interfered with any proprietary rights protected by **Section 28 of the repealed Registered Land Act**. In any case, at that point in time, neither of the parties was the registered proprietor of the suit land and none had a greater right than the other. However, all of them were, as children of the deceased, entitled to work on the suit land until the issue of succession was finalized. Hopefully, that has now been done and if not, then it should be expedited.

The up-shot of the above is that this appeal is devoid of merit. It is accordingly dismissed. Each party to meet their own costs.

**B.N. OLAO**

**JUDGE**

**14<sup>TH</sup> OCTOBER, 2016**

Judgment delivered, dated and signed in open Court this 14<sup>th</sup> day of October 2016

Mr. Chege for the Appellant present

Mr. Kihara for the Respondents present

Mr. Gichia Court Clerk present

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**14<sup>TH</sup> OCTOBER, 2016**