



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYERI

CIVIL APPEAL NO. 50 OF 2008

JOHN WANJAU WAMBUGU.....APPELLANT

VS

ZIPPORAH KABUI NGATIA.....RESPONDENT

JUDGMENT

On the 25.10.2004, John Wanjau Wambugu (*hereinafter referred to as Appellant*) filed land case NO. 24 of 2004 in respect of Nanyuki/West Timau Block 2/932 (Matanya Marura) (*hereinafter referred to as suit property*) against Zipporah Kabui Ngatia (*hereafter referred to as the Respondent*). The appellant alleged that the respondent was occupying the suit property illegally without his consent.

The Appellant who was the claimant in the Tribunal claimed that he bought receipts for this land from Mr. Mbaria Mwangi on 3.5.1974 vide membership No. 2311 but allocation was not immediately done. He personally did the balloting where he was trans-located to Marura at Wathituga area. He stayed along time without developing this land and that is why Zipporah took an advantage of developing it.

The respondent reply was that she occupied the land in 1973 and by that time no proper surety had been done. The provincial commissioner Mr. Oyugi went to Matanya and ordered that all developed land should not be interfered with. She did not do any balloting because of the aforesaid during the 1st day but she returned on the 3rd day and found that the remaining ballots were stolen. She continued going to the chiefs office without taking the ballots.

The Tribunal concluded the evidence and found that Zipporah was deceived by the area chief and that she did not produce any documentary evidence to entitle her for ownership.

The panel of elders ordered that the land was initially owned by John Wambugu Wanjau by virtue of having all the documents to prove the right ownership and that the land disputed was 932 where as the Respondents land was 931.

On appeal by Zipporah Kabui the Appeals Committee found that the appellant was not fairly heard by the Tribunal despite having lived there up to the date of the hearing of the case and that the respondent disappeared for time years after balloting.

The Appeals Committee declared that the suit property thus Timau/Block 2/932, Matanya/Marura belongs to Zipporah Kabui Ngatia and conducted the District Land Registrar to write the proper title deed under the Respondents name and issue a new title to Zipporah Kabui Wambugu the respondent herein. The verdict of the Laikipia District Land Dispute Tribunal was set aside.

The appellant has come to this court pursuant to the provisions of the Land Dispute Tribunal Act No. 18 of 1990 that gave this court the jurisdiction to entertain an appeal from the appeals' Committee on grounds that the Appeals Committee lacked the jurisdiction to entertain the matter.

I agree with counsel for the appellant that the Appeals Committee lacked the jurisdiction to entertain the dispute because the said dispute revolves around ownership of property and not *trespass* or *boundary dispute* or *right to work on or occupy* land as envisaged by the *Land Disputes Tribunal Act No 19 of 1990(repealed)*. The defunct Land dispute Tribunal and the Appeals Committee were mandated by law to hear dispute relating to boundaries, claims to work or occupy land and/or passport to land. The Land Dispute Tribunal Act No. 18 of 1990 (repealed) did not give jurisdiction to the Land Dispute Tribunals or Appeals Committee to determine disputes on land ownership.

Ultimately, this court finds that both the *Lamuria Land Disputes Tribunal* and the *Rift Valley Appeals' committee* lacked jurisdiction to entertain the dispute in Lamuria land case no 24 of 2004 and Appeals case no 44 of 2005. The appeal is allowed and the Appeals' Committee decision made on the 15.7.2008 in the Rift Valley, Provincial Commissioner's Board room is hereby set aside. Costs of the appeal to the Appellant..

DATED AND SIGNED AT ELDORET THIS DAY OF.....2015

ANTONY OMBWAYO

JUDGE

DELIVERED AND SIGNED AT NYERI THIS 27TH DAY OF JANUARY,2015

LUCY WAITHAKA

JUDGE