



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 545 OF 2010

ALICE WAMAITHA MWANGI.....APPELLANT

VERSUS

JANE WANJIRU MUNGAI.....RESPONDENT

(Being an appeal from the judgment and orders of Appeals Committee Central Province made on 14/10/2010 in Kiambu West Land Dispute Tribunal Claim No. 16/2009)

J U D G M E N T

The appeal arises from the decision and award by the Appeals Land Committee Central Province, made on 14th October 2010 in respect to Kiambu West Land Dispute Tribunal in its Claim No. 16/2009. The dispute concerns land known as Limuru/Bibirioni/1936, which is registered in the name of the Appellant, Alice Wamaitha Mwangi. It is alleged that the land in dispute belongs to the Estate of the Late Peter Gakuha, who was the husband to both the Appellant and the respondent.

The record before court shows that the Appellant lodged a claim before the District Land Disputes Tribunal in Kiambu West. Both parties adduced evidence and the witnesses were cross-examined by the Tribunal. The Tribunal findings were that both parties were wives of the late Peter Gakuha. The panel concluded that the disputed land should be shared equally between the Appellant and the respondent. The Tribunal further ordered that the Appellant remains with the developed part of the land while the respondent remains with the other part. The Appellant being aggrieved by this decision, appealed to the Kiambu Provincial Land Appeal Committee. Although the record does not show the grounds upon which the appeal before the Appeals Committee was based on, both parties registered their claim and the appeal Tribunal upheld the District Land Disputes Tribunal decision.

The Appellant was also aggrieved with the decision of the Provincial Land Appeal Committee and raised the following summarized grounds:

1. ***The appeals committee erred in law in failing to overturn the decision of elder's despite of the fact that the elders dealt with the land registered Land Act Cap 300 laws of Kenya.***

2. ***The appeal committee erred in law in arriving at a decision that was confusing inconsistent and against the law.***

The parties agreed to prosecute the appeal by way of written submissions. The Appellant submitted on three issues:

1. Whether the District Land Disputes Tribunal had the jurisdiction to deal in land registered under the Registered Land Act (now repealed)

2) Whether the appeal committee erred in upholding the District Tribunal decision.

3) Who is to bear the cost of this appeal.

The Appellant submitted that the jurisdiction of the land Tribunal is set out in section 3(1) of the Land Dispute Tribunal Act which provides that that the Tribunal can only hear and determine cases of civil nature involving a dispute as to the division of or the determination of boundaries to land including land held in common, claim to occupy or work on land or Trespass to land. The Appellant argued that the land in dispute was registered under RLA Cap 300 and therefore the Appellant was the registered owner of the suit premises.

On the second issue, the Appellant submitted that the Tribunal ordered that the land in dispute be subdivided into two and fresh titles issued thus interfering with the beneficial interest in ownership of the Appellants land, an issue in which the Tribunal should have no jurisdiction. She further stated that the Appeal Land Committee erred in upholding the Tribunal decision. The Appellant submitted that the appeal Tribunal ought to have found that it lacked jurisdiction. The Appellant referred the court to decision in **Jidraph Nyoro Kangethe Vs Sila Kagethe Nyoro HCCA 109/2001**. She urged the court to vacate the order issued by the District Land Disputes Tribunal and issue other orders as it deem just to protect the Appellant's land.

I have carefully perused the record including the District Land Disputes Tribunal Proceedings and the ruling and the written submissions before this court on the face of the grounds of appeal.

The claim before both Tribunals was concerning ownership of land known as Limuru/Bibirioni/1936, registered in the name of the Appellant as shown by the title deed on record. In my view, District Land Disputes Tribunal lacked jurisdiction to entertain the claim. The jurisdiction of both the Land Dispute Tribunal and the Land Appeals Committee are set out under Section 3(1) of the Land Disputes Tribunal Act, (now repealed) i.e. involves:

(a) The division of, or the determination of boundary to land, including land held in common.

(b) a claim to occupy or work land or

(c) Trespass to land

Under Section 8 the law provides that *any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute, is situated.* At the appeal committee the same claim of ownership was presented and the committee upheld the District Tribunal decision which in my view was wrong since the land was a registered land in the Appellant name and the issue in question was the beneficial interest in it. In the case of **Beatrice M'Marete Vs. Republic & 2 Others Ex-Parte John Gitonga Mbui [2004] eKLR** the Court of Appeal had this to say;

“In our view, the dispute before the Tribunal did not relate to boundary, claim to occupy or work land, but a claim to ownership. Taking into account the provision 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 Registered Land Act to the applicant. In our view, the Tribunal acted in excess of its jurisdiction.”

The decision of the appeal committee was also invalid in the sense that it had no jurisdiction to determine the ownership of the land in dispute. In **JOSEPH KAROBIA GICHERU V MICHAEL GACHOKI**

GICHERU [2013] EKLR where the court stated:

Where a court or a Tribunal embarks on the hearing and proceeds to determine a dispute over which it has no jurisdiction, the entire proceedings are empty of legal life and are null and void ab initio. No amount of acquiescence by any party to the conduct of such proceedings and no measure of consent by parties, no matter how express or deliberate could confer upon such court or Tribunal such jurisdiction. The proceedings and orders are nullities and of no legal effect from inception and remain so to the end.

Applying the principles stated in the above cited cases interpreting Section 3(1) of the Land Disputes Tribunal Act (now repealed) I hold that both the Kiambu Land Disputes Tribunal and the Nyeri Land Appeals Committee had no jurisdiction to entertain and decide a dispute that concerned a beneficial interest in a registered land as they did. I find that this appeal has merit and allow it. Either party is at liberty to file a proper suit before a court with jurisdiction. Orders accordingly.

Dated and delivered at Nairobi this 23rd day of June, 2015.

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D A ONYANCHA

JUDGE