



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

E.L.C.A NO. 34 OF 2014

ROBERT MWANGI NGARI.....APPELLANT

VERSUS

LUCY WAMIRU NGARI.....RESPONDENT

***(BEING AN APPEAL FROM THE AWARD OF THE PROVINCIAL LAND DISPUTES TRIBUNAL
CASE NO. 18 OF 1990 – NYERI DATED AND READ TO THE PARTIES ON 27TH MAY 2009)***

JUDGMENT

This appeal is against the judgment of the Provincial Lands Disputes Appeal Committee Nyeri in their appeal case No. 18 of 1990 in which the appellant and the Respondent were litigating over land parcel No. BARAGWI/THUMAITA/1895.

The genesis of this dispute is that on 5th May 2005, the Respondent (as complainant) moved to the Gichugu Land Disputes Tribunal in their case No. 38 of 2005 seeking an order that she was

entitled to a share of the parcel of land No. BARAGWI/THUMAITA/1895 (hereinafter the suit land) which was then registered in the joint names of the Respondent (as defendant), one Antonio Ngari (deceased). The suit land measures one (1) acre.

After hearing the parties, the Gichugu Land Disputes Tribunal divided the suit land as follows:-

- | | |
|--------------------------|----------------|
| 1. <i>Appellant</i> | - ½ acre |
| 2. <i>Respondent</i> | |
| 3. <i>Janet Wanjira</i> | jointly ½ acre |
| 4. <i>Mary Wangui</i> | |
| 5. <i>Margaret Njeri</i> | |

Aggrieved by that award which had been adopted by the Principal Magistrate's Court Kerugoya in Land Disputes Tribunal Case No. 7 of 2006, the Appellant, exercising his rights under ***Section 8(1) of the then Land Disputes Tribunal Act*** (now repealed), moved to the Provincial Land Disputes Appeal Committee at Nyeri which up-held that decision in their case No. 18 of 1990 thus giving rise to this appeal.

The appeal was admitted by W. Karanja J. (as she then was) on 29th September 2010 at the High Court in Embu before being transferred to this Court on 12th February 2013 by Ong'udi J. following the establishment of the Environment and Land Court.

This appeal raises two points of law:-

1. ***That the Tribunal exceeded its jurisdiction by sub-dividing registered land.***
2. ***That the Tribunal erred when it made orders regarding jointly registered land when one owner was deceased.***

The appeal was canvassed before me orally on 7th October 2015 with Mr. Munene appearing for the appellant while the respondent was in person.

The thrust of Mr. Munene's argument was that the Gichugu Land Disputes Tribunal had no jurisdiction to distribute the Estate of a deceased person because as at the time the Tribunal was rendering its decision, one of the joint owners ANTONIO NGARI was already deceased and where one co-owner dies, the land reverts to the surviving owner.

On her part, the respondent stated that she has litigated with the appellant for a long time over the suit land and she has no place to live and is staying with her children in town.

I have considered the appeal. It is not in dispute that the suit land is registered under the now repealed ***Registered Land Act***. According to the certificate of search which is part of the record herein, the suit land was at all times registered in the joint names of the appellant and one ANTONIO NGARI who died on 27th March 2003. The said ANTONIO NGARI was therefore not a party to this dispute which, as I have stated, commenced at the Gichugu Land Disputes Tribunal on 5th May 2005. There is no evidence that his legal representative was a party to those proceedings which were

between the two parties herein. Clearly therefore, what the Gichugu Land Disputes Tribunal did, and which was adopted by the Magistrate's Court at Kerugoya and confirmed by the Provincial Land Disputes Appeals Committee in Nyeri amounted to intermeddling with the Estate of a deceased person which is prohibited by ***Section 45 of the Law of Succession Act***. The Tribunal had no jurisdiction to sub-divide land belonging to a deceased person as that was not part of its mandate under ***Section 3(1) of the repealed Land Disputes Act*** and its award was therefore a nullity.

Secondly, it has been held that a Land Disputes Tribunal established under the ***repealed Land Disputes Tribunal Act*** had no jurisdiction to determine a dispute concerning ownership or title to Registered land. The Court of Appeal in the case of ***JOTHAM AMUNAVI VS THE CHAIRMAN SABATIA DIVISIONAL LAND DISPUTES TRIBUNAL & ANOTHER C.A. CIVIL APPEAL NO. 256 OF 2002*** had the following to say about the powers of the Land Disputes Tribunal:-

"It is clear that the proceedings before the Tribunal related to both title to land and to 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"

See also ***MERCIA MULIORO AND OTHERS VS SABOTI LAND DISPUTES TRIBUNAL C.A CIVIL APPEAL NO. 82 OF 2011*** and also ***JOSEPH LELEI AND ANOTHER VS RIFT VALLEY LAND DISPUTES APPEALS COMMITTEE & OTHERS C.A CIVIL APPEAL NO. 82 OF 2006 (ELDORET)*** among other cases on this issue.

In the dispute the subject of this appeal, the Gichugu Land Disputes Tribunal sub-divided the suit land between the appellant and the respondent as well as three other persons. It had no jurisdiction to issue the orders that it did and similarly, the Provincial Land Disputes Appeals Committee had no jurisdiction to up-hold those orders. Where a Court confers jurisdiction upon itself and proceeds to hear and determine a dispute, those proceedings and the resultant determination are a nullity – ***DESAI VS WARSAMA 1967 E.A 351***.

Ultimately therefore, I am satisfied that this appeal is well merited and I allow it. The orders of the Gichugu Land Disputes Tribunal dividing the suit land between the appellant and the respondent and which were confirmed by the Provincial Land Disputes Appeals Committee in its Tribunal Case No. 18 of

1990 are set aside. Each party shall meet their own costs.

B.N. OLAO

JUDGE

27TH NOVEMBER, 2015

27/11/2015

Before

B.N. Olao – Judge

Mwangi – CC

Mr. Muchira for Munene for Appellant – present

Respondent – present

COURT: Judgment delivered, dated and signed this 27th day of November, 2015 in open Court.