



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

MERU LAW COURTS

CIVIL APPEAL NO 98 OF 2002

APHAXARD NJUE MUCHEKE.....APPELLANT

VERSUS

TYRES MBAE KIRAITHE.....RESPONDENT

J U D G E M E N T

(Being an Appeal from the Award of the Land Disputes Appeals Committee in Land Disputes Appeals Tribunal No. 80 of 2002 which Appeal was read in Court on 28.8.2002 in Chuka SRM's Court).

1. The Memorandum of APPEAL IN THIS Appeal has the following grounds:-

1. *The Appeals Committed erred in Law in failing to appreciate that the Land Disputes Tribunal had no jurisdiction to deal with title to land.*
2. *The Appeals Committee erred in Law in upholding the decision of the Meru South Land Disputes Tribunal in LDT No. 15 of 2001, while ignoring the fact that the tribunal had acted contrary to the provisions of Section 3 of the Land Disputes Tribunal Act No. 18 of 1990.*
3. *The appeals Committee erred in Law in failing to appreciate that the appellant held LR. NO. MWIMBI/KIRARO/200 by virtue of first registration and that the appellant's title thereto is absolute and indefeasible.*

2. For the above reasons, the Appellant prays this Court to wholly allow this appeal and set aside the award of the Appeals Committee, the award of Meru South Land Disputes Tribunal and all subsequent orders thereto and order the Respondent to pay costs of this appeal.

3. To contextualize the genesis of this Appeal, I wish to quote herebelow the ruling made by the Land Disputes Tribunal and on appeal the Judgement and/or Ruling made by the Provincial Land Disputes Appeals Tribunal.

4. The Land Disputes Tribunal in MWI/15/2001 made the following decision:

“RULING

The panel has noted with great concern that Mucheke the Plaintiff erred when he Subdivided the ancestral land to his sons though locally (sic) omitting Mbae who is his brother born of the same father to render him landless. Therefore the panel is of the opinion that Mbae the Plaintiff be awarded 2 acres of land from parcel No. MWIMBI/KIRARO/200 which is being disputed.

“ The right to appeal within 30 days. Each party to cater for its costs”.

5. The Provincial Land Disputes Appeals Tribunal made the following decision:

“JUDGEMENT

This Court concurs with the decision that was given by the Meru South District Land Tribunal. Therefore, the Meru South Tribunal decision still stands and should be implemented.

“ ORDER

1. ***The Survey should be done and Mbae should be given the document of the ownership of two acres.***
2. ***The Appeal is dismissed with Costs.***
3. ***The Appellant should pay the Respondent the Appeal costs.***

R.A.O- Sixty (60) days granted”.

APPELLANTS SUBMISSIONS

6. The Appellants submit that the Respondent was claiming one acre before the District Land Disputes Tribunal but the tribunal awarded the Respondent two acres from the suit land, parcel No. Mwimbi/Kiraro/200 in LDT NO. 15 of 200 now Chuka Magistrate’s Court LDT Case No. 12 of 2001. The Appellant states he appealed to the Provincial Appeals Committee in Appeal No. 80 of 2012 and the Appeals Committee upheld the decision of the District Tribunal.
7. The Appellant says that during the pendency of the Appeal, the Appellant M’Mucheke Kiraithe died on 5/8/2006 Consequent to which the family of the deceased original appellant appointed Aphaxard Kiraithe, the present Appellant to take over this matter as a legal representative of the original Appellant.
8. The Appellant faced some difficulties and could not take over the suit in good time but after obtaining the apposite limited letters of grant, the Court allowed him to take over the suit.
9. The Appellant submits that the Appeals Committee had no jurisdiction to adjudicate and/or award the Respondent two acres or any portion from Land Parcel No MWIMBI/KIRARO/200 and the Appeals Committee therefore acted contrary to section 3 of the Land Disputes Tribunals Act.
10. The Appellant submits that L.R. No. Mwimbi/200 was held by virtue of a first registration and, therefore, the Appellant’s title was absolute and indefeasible. It is submitted that the tribunal had no jurisdiction to entertain this matter. He further submits that the Tribunal proceeded to award the Respondent that which was not prayed for. The Appellant Submits that this was a wrong conclusion.
11. The Appellant prays that this Appeal be allowed and the decisions of the District Land Disputes Tribunal and the Provincial Appeal Committee be set aside with costs to the Appellant.
12. In support of his propositions, the appellant has tendered the following cases:-
 - a. ***Civil Appeal No. 179 of 1999 (Nairobi) –Nyandundo Primary School and Another Versus Stephen Waweru.***
 - b. ***Civil Appeal No 91 of 2007 (Meru) M’Mbijiwe M’Mutuata Versus Jane Kathanga Rukari***

RESPONDENT’S SUBMISSIONS

13. The Respondent tells the Court in his Submissions that the Appellant is the elder brother of the

Respondent who had the suit land registered in his name as a trustee for the family to hold it in trust for himself and for the Respondent. He says that he brought his claim over Parcel No MWIMBI/KIRARO/200 to the District Land Disputes Tribunal, claiming his right of use and occupation, after his brother, the original Appellant, had tried to Subdivide and transfer his land to his Children, completely ignoring the Respondent, his younger brother. After the Dispute was heard by the District Tribunal, it found in his favour and awarded him 2 acres to occupy and use out of the 7 acres which comprised parcel NO. MWIMBI/KIRARO/200.

14. The Respondent Submits that the District Tribunal did not exceed its jurisdiction as it did not deal with issuance of a title. He says that this was in congruence with Section 3 of the Land Disputes Tribunals Act, No 10 of 1990. In support of this proposition, the Respondent tenders the case of JOSEPH KIRIMI Versus ISABELLA KANUGU RIUNGU [H.C.C.A NO 1 OF 2008], MERU.
15. He continues to say that the Appellant felt dissatisfied and Appealed to the Eastern Provincial Appeals Committee which dismissed his appeal.
16. He submits that the Provincial Appeals Committee did not exceed its Jurisdiction as it merely upheld the decision of the District Tribunal which had allowed the Respondent to use and occupy 2 acres of the family land where he is settled with his family and where he has his developments.
17. The Respondent Submits that the appeal lacks merit and should be allowed. He opines that where the parties are close relatives who are settled on family or trust land, as in this case, there is need for close and serious consideration of the interest of the parties so as to arrive at a just and fair decision.
18. The Respondent further submits that the Appellants claim that the original Appellant held an indefeasible title does not disentitle the Land Disputes Tribunal from deciding on matters of occupation to land, trespass and boundaries. The Respondent reiterates that the case of Joseph Kirimi Versus Isabella Kanugu Riungu (op.cit) buttresses this proposition.

DETERMINATION

19. It is not controverted that this Suit concerns close relatives. The Respondent is the younger brother of the Appellant. It is also not controverted that the Respondent and his family, all live on the Suit land. It is also not in dispute that the Respondent has properties on the land in dispute.
20. The Appellant has claimed that the District Land Disputes Tribunal whose decision was upheld by the Eastern Provincial Appeals Committee lacked jurisdiction to deal with the suitland, firstly, because by virtue of first registration, the original Appellants title was absolute and indefeasible, Secondly, because the District Tribunal had acted contrary to the provisions of Section 3 of the Land Disputes Tribunal Act, No. 18 of 1990, thirdly, because the District tribunal had no jurisdiction to deal with title to land and fourthly, the District Tribunal had awarded the Respondent what he had not prayed for:-
21. Section 3 (1) the District Land Disputes Tribunals Act states as follows:-

“3. (1) 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 or work land ; or***
 - c. ***Trespass to land shall be heard and determined by a Tribunal established Under Section 4”.***
22. In this suit the Respondent claims that the original Appellant held the suit land in trust for the family including the Respondent. Nowhere in the Appellant’s Submissions does he dispute this fact. There is nowhere he claims that he had purchased the land.

23. It is clear that the Appellant participated in the proceedings in the District Land Disputes Tribunal. At no time did he challenge its jurisdiction. He also did not challenge its constitution as prescribed under Section 4 of the Land Disputes Tribunals Act.
24. I have carefully considered the Submissions proffered by the parties and the authorities they have tendered in support of their respective propositions. I do note with Interest that both the Appellant and the Respondent have tendered authorities constituting Judgements delivered by the same Judge in support of their diametrically opposed assertions. The Appellant tendered the case of M' Mbijiwe M' Mutuota (Appellant) versus Jane Kathanga M'Rukaria (HCA NO. 91 OF 2007, Meru) Respondent. In this suit the Judge said that the Tribunal lacked jurisdiction to deal with land which had a title. The Respondent tendered the Case of Joseph Kirimi (Appellant) Versus Isabella Kanugu Riungu (Respondent) H.C.A 9 of 2008, Meru). Here the Judge found that the Respondent had a right to occupy and work land.
25. Cases have different Circumstances which drive decisions made during their determination. In this matter, I find that the District Appeals Tribunal had jurisdiction to award 2 acres of land to the Respondent to occupy and work upon. It is not disputed that the Respondent has been living on the land with his family. He has properties on the land. It would have been preposterous for the District Land Disputes Tribunal to have found otherwise. That would lead to his eviction from his ancestral land. It would also have rendered him and his family destitute. And yet this was ancestral land which the original registered owner had had his name registered in as owner only by virtue of it having been family land.
26. I find that the Appeals Committee did not err in upholding the decision of the Meru South Land Disputes Tribunal in LDT No. 15 of 2001. The Tribunal did not act contrary to section 3 of the Land Disputes Tribunal Act No. 18 of 1990. I find that the Appeals Committee's finding was in consonance with allowing the Respondent to occupy and work his family/ancestral land.
27. Regarding the Submission that the District Land Disputes Tribunal had awarded the Respondent more than he had claimed, I do note that Land Disputes Tribunal applied Customary Law. Customary had Principles of equity, proportionality and justice and I find that there was nothing wrong with the Tribunal awarding the Respondent two acres out of the Seven acres that made up Land Parcel No. MWIMBI/KIRARO/200.
28. Concerning the Submission that the Original Appellants Land was a first registration and therefore absolute and indefeasible, I disagree. Where land is family land and held in trust for other members of his own family upholding this position would spawn untenable consequences. Just as a father cannot disinherit his children and family of their family/ancestral land just because he is a first registered owner, a person who is the first registered owner of the land cannot disentitle a brother out of his family/ancestral land.
29. All land registered under the repealed Registered Land Act has titles. That the law envisaged a situation where Registered land with titles could be handled by Land Disputes Tribunals is buttressed by Section 159 of the Registered land Act which states:-

Civil suits and proceedings relating to the title to, or the possession of, land, or to the title to a lease or charge, registered under this Act, or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act. Or which is expressed by the Act not to require registration, shall be tried by the High Court and where the value of the subject matters in dispute does not exceed twenty five thousand pounds by the Resident Magistrate's Court, or where the dispute comes within the provisions of section 3(1) of the Land Disputes Tribunals Act in accordance with that Act.

It is clear that where the dispute comes within the provisions of Section 3(1) of the Land Disputes Tribunal Act, Tribunals had jurisdiction to deal with titled land.

In the Circumstances, all the grounds cited in this appeal are dismissed. The appeal is, therefore, dismissed in its entirety.

In view of the fact that the parties are close family members, I award no costs.

It is so ordered.

Delivered in Open Court at Meru this 11th day of November, 2015 in the presence of:-

CC: Daniel/ Lilian

Muthamia Present for Respondent

Kirimi Absent for Appellant

P. M. NJOROGE

JUDGE