



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

HCCA NO. 110 OF 2013

KANYI MACERAAPPELLANT

VERSUS

JAMES MWANGI KANYI1ST RESPONDENT

SAMUEL NDAMBIRI KANYI2ND RESPONDENT

(APPEAL FROM THE AWARD OF GICHUGU LAND DISPUTES TRIBUNAL DELIVERED ON 6TH AUGUST, 2006 PURSUANT TO SECTION 9 LAND DISPUTES ACT NO. 18 OF 1990 AND THE AWARD OF THE CENTRAL PROVINCIAL LAND DISPUTES APPEALS COMMITTEE AT NYERI UNDATED)

JUDGMENT

This appeal is against the decision of the Central Provincial Land Disputes Tribunal Appeal Committee at Nyeri. The decision itself is un-dated but having heard the appeal, the committee made the following orders:-

AWARD

“This tribunal having no jurisdiction over the suit parcels, award with the strength of the consensus of both parties that the status quo remain. No costs awarded

60 days right of appeal”

I have considered the record of appeal and the submissions by the appellant and Mr. Ngigi for the respondents.

It is clear from the record herein that the dispute between the parties and which was determined by the Gichugu Land Disputes Tribunal involved the parcel of land known as BARAGWI/THUMAITA/231. The said Tribunal ordered that the said parcel of land be divided among the following eleven (11) persons as indicated below:-

- | | |
|---------------------------------------|----------|
| a. <i>James Mwangi Kanyi</i> | - 1 Acre |
| b. <i>Samuel Ndambiri Kanyi</i> | - 1 Acre |
| c. <i>Anthony Chege Kanyi (minor)</i> | - 1 Acre |
| d. <i>Kanyi Macera</i> |) |
| e. <i>Margaret Wanjiru Kanyi</i> |) |
| f. <i>Lydia Wawira Kanyi</i> |) |

- g. *Josephine Muthoni Kanyi*)
h. *Cicily Wambui Kanyi*) 2 Acres jointly
i. *Lucy Wanjiku Kanyi*)
j. *Alicarada Wanjira Kanyi*)
k. *Lydia Wacera*)

When the matter went on appeal to the Central Provincial Land Disputes Tribunal Appeal Committee, it made the award mentioned above which in essence was to up-hold the decision of the Gichugu Land Disputes Tribunal which had ordered the sub-division of the land in dispute as indicated above.

The issue of law raised in this appeal is that both the Gichugu Land Disputes Tribunal and the Central Provincial Land Disputes Appeal Committee had no jurisdiction to determine a dispute touching on title to land. That jurisdictional issue is well founded. In **JOTHARI AMUNAV VS THE CHAIRMAN SABATIA DIVISIONAL LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL NO. 256 of 2002**, the Court of Appeal expressed itself as follows:-

“It is clear that the proceedings before the Tribunal related to both title to land and to beneficial interests 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”

That authority is binding on me and it clearly sets out the law as regards the powers of the Land Disputes Tribunal under **Section 3 of the now repealed Land Disputes Tribunal Act**. The Appeal Committee against whose decision this appeal has been filed, having observed that the Tribunal had no jurisdiction to entertain the dispute, erred in allowing the same to stand. As the Gichugu Land Disputes Tribunal had no jurisdiction to grant the orders that it did with respect to registered land, it follows that the decision of the Appeals Committee confirming the Tribunal’s award and ordering a “*status quo*” was made in excess of jurisdiction and cannot be allowed to stand.

Ultimately therefore, this appeal is allowed and the decision of the Provincial Land Disputes Appeal Committee is hereby set aside.

Each party shall meet their own costs this being a family dispute.

B.N. OLAO

JUDGE

27TH JUNE, 2014

27/6/2014

Before

B.N. Olao – Judge

CC – Mwangi

Appellant – present

Mr. Mwai for Mr. Ngigi for Respondent – present

COURT: Judgment delivered this 27th day of June 2014 in open Court.

Appellant present in person

Mr. Mwai for Mr. Ngigi for Respondent present

Right of appeal explained.

B.N. OLAO

JUDGE

27TH JUNE, 2014