



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 366 OF 2009

AUSTIN MACHARIA NJAGA. APPELLANT

VERSUS

JULIUS CHEGE MUGWE. RESPONDENT

(From the decision of Nyeri Provincial Land Appeal Committee dated 21/5/2009)

J U D G M E N T

This appeal which arises from a decision and award of Nyeri Provincial Land appeal Committee, concerns a piece of land known as L.R. No. LOC 8/Kari-Karuru/394 measuring about 5.6 acres and presently registered in the name of Chuba Chege, under the Registered Land act, Cap 300 of the Laws of Kenya.

The original dispute was determined by Kahuro Land Disputes Tribunal which in its award, gave two acres of the land to Julius Chege Mugwe, the Respondent herein. The Appellant Austin Macharia Nyaga who was aggrieved by the decision, appealed to the Nyeri Provincial Land Appeals Committee which upheld the decision of the Kihuro Land Disputes Tribunal. The Appellant then appealed to this court in this Appeal.

The Appellant raised the following grounds of appeal: -

1. That the Kahuro Land Disputes Tribunal and Nyeri Provincial land Appeals Committee had no jurisdiction under the Land Disputes Act No. 18 of 1990 (now repealed) to award the two acres of L.R. No LOC. 8/Kari-Karuru/394, to the Respondent.
2. That the two tribunals acted in excess of their jurisdiction.
3. That the Nyeri Lands Appeals Committees Judgment or award should be quashed because it was not based on any grounds or reasons.
4. That the registration of the Land in the name of the Appellant being a result of a court decision in succession proceedings, could not be altered by the land Dispute Tribunal or Committee.

The Appellant had submitted in this appeal that both the Kahuro Land Disputes Tribunal and the Nyeri Land Appeals Committee had no jurisdiction to award a beneficial interest in registered land beyond determination of boundary or land occupation and/or use.

In my view, the jurisdiction of the tribunal and appellate committee is clearly defined under section 3(1). The tribunal adjudicates matters concerning:

1. *Division of or determination of boundaries to land including land held in common.*

2. *Claims in relation to occupation of land or working on land*

3. *Trespass to land.*

In the instant case, it is clear that the Kiharu Land Dispute Tribunal and the Nyeri Provincial Appeals Committee determined the ownership of the 2 acres of land which was not within their jurisdiction. Before the Kiharu Land Tribunal the Respondent stated that he purchased the 2 acres from the late Chuba Chege, in its finding the tribunal stated that both the late Njaga Chege and Julius, Respondent had equal rights to inherit Chuba Chege. The Respondent being a purchaser and late Njaga Chege being a beneficiary. The Appeals Committee on the other hand sustained the award by stating that the Respondent had occupied the land legally since 1963 having bought the 2 acres from the original owner. In my view, the dispute concerned the ownership of the 2 acres of Land which was not within the jurisdiction of the Land tribunal.

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.”

Again, the claim before the tribunal and the appeal committee concerns the ownership of land belonging to the late Chuba Chege which was later transferred to the late Njaga Chege through succession. In my view the 2 acres of land formed part of the estate of the late Njaga Chege which was not within the jurisdiction of the Tribunal. Section 47 of the Succession Act, Cap.160, Laws of Kenya, prohibits the tribunal from dealing with disputes relating to the estates of deceased persons. It is only the High court which has jurisdiction to determine such disputes.

Section 47: Jurisdiction of High Court states:

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient:

Provided that the High Court may for the purpose of this section be represented by Resident Magistrates appointed by the Chief Justice.

In the end, I find that the Appeal committee had no jurisdiction to hear the claim. The award dated 21st May 2009 is invalid. In making this finding I am guided by the Court of Appeal decision in **Joseph Karobia Gicheru vs 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.

For the above reasons, this court finds that this appeal has merit and must succeed. The Land Registered as L.R. No. Loc. 8/Kari-Karuru/394 formerly in the name of Chuba Chege but presently in the name of Njaga Chege remains the property of Njaga Chege.

This appeal is accordingly allowed with costs. Orders accordingly.

Dated and delivered at Nairobi this 17th day of September, 2014.

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D A ONYANCHA

JUDGE