



REPUBLIC OF KENYA

High Court at Nyeri

Civil Appeal 195 of 2010

JEREMIAH NGARI MUHIA.....APPELLANT

VERSUS

ELIUD MWANGI WAMWEA & OTHERS.....RESPONDENTS

JUDGMENT

The genesis of this appeal is Mukurwe-ini Land Disputes Tribunal case No.4 of 2005, between Mr. Jeremiah Ngari Muhia, the claimant, *hereinafter referred to as the appellant* and Mr. Eliud Mwangi Wamwea and five (5) others *hereinafter referred to as the respondents*.

The gist of the appellant's case at the Tribunal was that after the land *demarcation* in the year 1957, his boundaries were uprooted by his neighbors and his land parcel number *Muhito/Mbiu-ini/761* measuring 1.4 acres changed its numbers from *Muhito/Mbiu-ini/761 to Muhito/Mbiu-ini/194*. The land had been initially registered under his father's name. He filed a succession case after his father's death and the land was registered in his name in the year 1971. He obtained the title deed in the year 1973 and thereafter measured the land on the ground with the Land Registrar and a surveyor in the year 1975 and found measurement to be 0.8 acres instead of the actual 1.4 acres. He was informed that the said parcel was not his land because it was reading in the map land parcel *Muhito/Mbiu-ini/194 instead of 761*. The land parcel No.Muhito/Mbiu-ini/194 belonged to *Gathenja Kahariri* which was far from his land. He was requested to report to the Chief's office with Gathenja Kahariri. The latter confirmed that parcel No.Muhito/Mbiu-ini/194 was his property. The appellants land was changed to parcel No.761 from the mistaken 194. the Land Registrar visited the land and advised him to file a claim because his land measured 0.8 acres instead of the actual 1.4 acres. In 1989 he visited the Land Registrar in Nyeri and found that the registration numbers had not been amended. He was advised to report the matter to Mukurwe-Ini Land Disputes Tribunal for the land claim. He suspected that his portion of land could have been included in the surrounding parcels namely *Muhito/Mbiu-Ini/760* of Beatrice Wangari Githae, *Muhito/Mbiu-ini 719* (which was subdivided into 1199 and 1205) *Muhito/Mbiu-ini/1199* also subdivided into 1308, 1309, 1310 and 1311. he requested the Tribunal to determine the boundaries hedges of his land once again as they were during the time of demarcation in the late 50's.

The respondents, are the appellant's neighbors and their case before the Tribunal was that the appellant's missing portion was left out during demarcation and that the same was not included in their parcels. They state that when their parents were alive, there was no complaints in respect of the parcels of land. When the appellant's father died, the appellant began to uproot the fence and tampered with the farm road. The respondents' position is that if the appellant's portion is missing then it was left out during demarcation.

The Tribunal listened to the parties and made a finding that:

1. The claim of the lost land portion by the plaintiff was genuine.
2. The claim of the plaintiff started in 1966 immediately after demarcation.
3. Both parties agreed had that the land Muhito/Mbiu-ini/761 belongs to the plaintiff.
4. The plaintiff produced proceedings from the land registrar dated 6/4/89 advising him to file a land claim case but not a boundary dispute after visiting the land of the plaintiff.
5. The plaintiff mentioned that he was fearing the other parties after demarcation because they were from a very well up and powerful family.
6. The appellant's case was a land claim.
7. The plaintiff's claim was that his land measures 1.4 acres as per the official search but on ground the same is approx.0.8 acres.

From the findings the Tribunal made an award that;

1. The Land Registrar Nyeri jointly with the District Surveyor Nyeri to visit the lands in dispute i.e Muhito/Mbiu-ini 760, 761 and 719 and also 1200, 1308, 1309, 1310, and 1311 and hive off the claimed portion of land measuring 0.6 acres by the plaintiff Mr. Jeremiah Ngari.
2. If the defendants are found to have been occupying the claimed portion belonging to plaintiff, they be compelled to remove all their properties therein including structures, permanent or temporary within the shortest time possible not exceeding 6 (six) months from the date the Award would be officially endorsed, to pave way for the appellant Mr. Jeremiah Ngari and his family put up permanent boundary structures to avoid further disputes of this nature in the parcels mentioned in the dispute in future I.e Muhito/Mbiu-ini/760, 761, 719 and also 1200, 1308, 1309, 1310 and 1311 respectively.
3. They also made an order for each party to meet its own costs of the suit.

Mr. Mwangi Wamwea and 5 others, *the respondents* herein appealed to the Provincial Land Appeals Committee on the grounds that the *Tribunal* erred in law and in fact in entertaining a matter outside their jurisdiction and that the said Tribunal erred in disregarding their evidence . That the elders erred in law and in fact in failing to note that the respondents had lived in the suit land since 1963 and were entitled to the same through adverse possession. Last but not least that the elders erred in law and in fact in entertaining the week evidence and ruling against the strong evidence.

The Provincial Appeals Committee heard the appeal and held that the border between Muhito/Mbiu-ini/760 and Muhito/Mbiu-ini/761 existed from 1963 and therefore it disagreed with the Nyeri District Land Disputes Tribunal and upheld the retention of the existing border and which the appellant acknowledged was there when he, inherited the parcel No.761 from his father.

The Appellant herein was not satisfied with the decision of the Appeals Committee and came to this court on grounds that the *Appeals Committee* erred in law in holding that the boundary existed from 1963, whereas land demarcation was done in 1958 at Mukurwe-ini Division.

This court has considered the appeal before it, the documents on record and the submissions filed by the parties. The court's jurisdiction to hear appeals from the appeals committee is grounded on *section 8 (9) of the Land Dispute Tribunals Act No.18 of 1990* which provides that an appeal shall lie to the High Court from appeals committee on a point of law within sixty days from the date of the decision. The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefor to any court. The court has looked at the Memorandum Of Appeal and the appellant's submissions and do agree with the appeals committee's decision that the border between Muhito/Mbiu-ini 760 and

Muhito/Mbiu-ini/761 existed from the date of demarcation. I agree with the holding of the Appeals Committee that the boundaries were to be retained as they existed during demarcation because at the time of filing a claim before the Tribunal the process of adjudication had been completed and any claim thereafter would be time barred .Moreover that the decision of the Land Disputes Tribunal was in error as the same was an attempt to rectify a map and registry documents and therefore exceeding their jurisdiction. **Section 3 of the Land Disputes Tribunals Act No.18 of 1990** limits the jurisdiction of the Land Disputes Tribunal to:-

- (a) The division of, or the determination of boundaries to land, including land held in common.**
- (b) Claim to occupy or work on land**
- (c) Trespass to land.**

The jurisdiction of the Tribunal does not include demarcating land or resolving disputes resulting from demarcation or claim of ownership

The appellant inherited his parcel of land through succession after his father's death in the year 1971, 14 years after the demarcation. The parcel of land was transferred in his name and title issued in 1973, 16 yeas after demarcation. This matter was commenced before the L.D.T in the year 2005 approximately 47 years after demarcation. The appellant is guilty of delay in attempting to recover the alleged portion of land.

The appeal on the ground that Appeals Committee erred in law as it did not send the parties to the survey and no notice was exchanged by the parties from the Appeals' Committee is a matter of fact and not grounded to any law hence cannot be a ground of appeal in the High Court.

The finding that Mikungungu Border is not disputed and well marked is also a fact and not a point of law and therefore cannot be a basis of appeal in this court.

This court does not agree with the allegation that the Appeals Committee did not evaluate the evidence adduced at the Mukurwe-ini Lands Disputes Tribunal as the record of the proceedings of the appeals' Committee shows findings that were made before an award was made.

Grounds 4 and 5 are not points of law as the issues raised require analysis of facts and therefore the court has no power to look into them. The upshot of the above is that the appeal is dismissed with costs.

Dated, signed and delivered at Nyeri this 21st day of February 2013.

A. OMBWAYO

JUDGE