



REPUBLIC OF KENYA

High Court at Embu

Civil Appeal 70 of 2007

(Being an Appeal against the Decision of the Embu Provincial Land Dispute Appeals Tribunal in Case No. EMBU 187/2002 dated 21st June 2007)

NYAGA TITIMA.....APPELLANT

VERSUS

NIGILIO NTHIGA CIGANA.....RESPONDENT

J U D G M E N T

This is an appeal against the orders of dismissal of the appellant's appeal by the Provincial Land Disputes Appeals Committee. The grounds raised in the appeal are:-

- 1. The said Provincial Land Disputes Appeals Tribunal erred in law by acting in excess its jurisdiction as conferred by Section 3(1) by affirming the decision of Mbeere Land Disputes Tribunal, which purported to declare and inter that the land in dispute was that the land in dispute was held in trust for the Respondent and other persons who were not party to the dispute.***
- 2. The said Provincial Land Dispute Appeals Tribunal erred in law by contravening the Provisions of Section 13(3) of the Land Disputes Tribunal Act in that they sought to arbitrate and resolve a matter which had been time barred by statute.***
- 3. The aforesaid Provincial Land Disputes Appeals Tribunal in excess of jurisdiction by affirming a decision whose effect would be a rectification of the Registrar, a function exclusively conferred on the High Court under Section 143(1) of the Registered Land Act (Cap. 300) Laws of Kenya.***

The counsels filed written submissions. Mr. Momanyi in his submissions indicates that the Tribunal was moved by the appellant and it accordingly acted. It never gave any award capable of being challenged.

He asked the court to expunge from the record the appellant's annexures as there was no record of appeal filed. Ms. Wairimu for the appellant dwelt on the issue of want of jurisdiction. I have read through all these submissions. A perusal of this file reveals very interesting occurrences.

First of all this appeal was never admitted as is required under Section 79B of the Civil Procedure Act and Order 42 Rule 1 and 12 of the Civil Procedure Rules. Secondly no record of appeal was prepared and no Directions under Order 42 Rule 13 of the Civil Procedure Rules were made by the court. This has given the court such a task in trying to check what is where.

The original matter was heard by the Mbeere District Land Dispute Tribunal whose award was in favour of Vigiho Nthiga Cigana (appellant). The award was adopted as a judgment of the court on 30/8/2002. The appellant filed an appeal to the Provincial Land Dispute Appeals Committee challenging that award.

The appeal was heard and was dismissed on 24/5/2006. In dismissing the appeal the appeals committee was actually confirming the decision of the Mbeere District Tribunal. The award of the Appeals Tribunal was again filed in court and it was adopted as an order of the court on 11/6/2007.

In this matter there are the following:

- (a) Award of Mbeere Land Disputes Tribunal No. 65/95**
- (b) Judgment and decree of Resident Magistrate's Court Siakago Award No. 46/2002**
- (c) Award in Embu Provincial Land Disputes Appeal No. 187/2002**
- (d) Order of the Siakago Court in Award No. 46/2002 of 11/6/2007.**

And on this day the parties were given 30 days to file an appeal which appeal was filed on 25/7/2007. I will refrain from labouring the issue of whether the appeal was filed within the prescribed period or not as the respondent never raised it.

The substantive issue of law raised by the appellant is the issue of jurisdiction. Did the appeals tribunal have jurisdiction to deal with appeals from the Land District Tribunals? Section 8(1) of the Land Disputes Tribunal Act (now repealed) provided:

“Any party to a dispute under Section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which is the subject matter of the dispute is situated.”

The Appeals Tribunal therefore clearly had jurisdiction to deal with appeals from the Land Disputes Tribunal but did it have the jurisdiction to deal with the appeal that was before it? In spite of the careless manner in which this appeal was presented to this court, I have patiently gone through the original records which are housed in this appeal.

The claim before the Land Disputes Tribunal was premised on a sale agreement or arrangement between the appellant and respondent. The tribunal found for the respondent and ordered that he transfers 3 acres out of land parcel **No. Nthawa/Riandu/1942**. This is the decision that was confirmed by the magistrate's court and the Provincial Lands Disputes Committee.

From what has been brought before me, the fundamental question of law which this court should decide in this appeal is whether the Provincial Land Disputes Committee and by extension the Mbeere Land Disputes Tribunal had jurisdiction to entertain, hear and decide this case.

The provision that clothed the Land Tribunals with jurisdiction was Section 3(1) of the now repealed Land Disputes Tribunals Act. It stated as follows:-

“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**
- (c) trespass to land shall be heard and determined by a Tribunal established under Section 4.**

It is clear that issues of contract, sale agreement and arrangements did not form part of this mandate. The said Tribunal did not also have jurisdiction to interfere with title or ownership to land. By ordering the appellant to surrender 3 acres from his land, the Tribunal was interfering with title. I am persuaded by the case of **WAMWEA VS CATHOLIC DIOCESE OF MURANGA REGISTERED TRUSTEES [2003] KLR 389**.

My finding is that the Mbeere Land District Tribunal had no jurisdiction to deal with the matter the subject of this appeal. Equally the Provincial Appeals Committee had no jurisdiction to deal with the appeal as it involved title to registered land.

The position has been that the Land Tribunals and Land Disputes Appeals Committees did not have jurisdiction to hear disputes over title to land. Mr. Momanyi's submission that the Appeals Tribunal made no decision as it dismissed the appeal is not correct. This is what the appeals committee Tribunal decided:-

“The appeal is therefore dismissed and the Mbeere District Land Tribunal's decision that the respondent Mr. Nigilio Nthiga Cicana be given 3 acres of land from Nyaga's parcel No. Nthawa/Riandu/1942 stands.”

If this court were to deal with the jurisdiction of the appeals committee/Tribunal alone and leave the mother decision of the Mbeere Land Disputes Tribunal it would be confirming an illegality just as the Provincial Appeals Committee had done.

My finding therefore is that the Provincial Land Disputes Appeals Committee and by extension the Mbeere Land Disputes Tribunal had no jurisdiction to deal with the appellant's land in the manner that the did.

I allow the appeal and set aside the awards by the Lands District Tribunal and the Provincial Land Disputes Appeals Committee. I also set aside any orders made as a consequence of the said awards.

Each party to bear his own costs.
Right of appeal explained.

DELIVERED, SIGNED AND DATED THIS 14TH DAY OF MAY 2013.

**H.I. ONG'UDI
JUDGE**

In the presence of:-

Ms. Wairimu for Appellant

Mr. Momanyi for Respondent

**Parties present
Njue CC**