

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 128 OF 2003

MWANGI KAMWANA. APPELLANT

VERSUS

BERNARD GATU KANJA. RESPONDENT

J U D G M E N T

The Nyeri Provincial Land Disputes Appeals Committee, on 23rd January, 2003, upheld a decision of the Muranga Land Disputes Tribunal in awarding 10.0 acres of the 25.1 acres of L.R. No. Loc 19/Gacharageini/616, to the Appellant Bernard Gatu Karanja as a trustee of Wanjiru Kanja and Njoki Kanja. The said committee also confirmed that the remaining 15.1 acres would go to Mwangi Kamwana as a trustee of his family and the late Wanjama's family.

The above decision aggrieved the Appellant who field this appeal on the main ground that the Muranga Land Disputes Tribunal and the Nyeri Provincial Land Appeals Committee, had no jurisdiction to award the substantive beneficial interest in that land to the Respondent and that the tribunals had in doing so, acted in excess of their jurisdiction under Section 3(1) of the then Land Disputes Tribunals Act, Cap 303A Laws of Kenya.

There is no dispute that the said parcel of land known as L.R. No. Loc 19/Gacharageini/616 is registered under the Registered Land Act, Cap 300 of the Laws of Kenya. There is no dispute either that the land was at the time of the tribunals' and committee's decision subject of Section 3(1) of the Land Disputes Act aforestated. In the view of this court, the order of the Muranga Land Disputes Tribunal which was later confirmed by the Nyeri Provincial Land Appeals Committee's Ruling of the 23rd January, 2003, was an order which purported to subdivide and transfer part of the relevant parcel of land to the Respondents as trustees. The order accordingly, dealt with and affected a substantive beneficial interest in a registered land an exercise of a power not donated to it under Section 3(1) of the Land Disputes Act aforestated.

It is the finding of this court accordingly, that both tribunals acted in excess of their jurisdiction and acted ultra vires the provision aforestated. Their act was illegal, null and void and cannot be left to stand.

The order of the Nyeri Provincial Land Disputes Committee is, therefore, hereby quashed and/or set aside as this appeal is allowed with costs to the Appellant. Orders accordingly.

Dated and delivered at Nairobi this 5th day of December, 2013.

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D A ONYANCHA

JUDGE