



IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO.181 OF 2009

KIRINKAI KISHOYANI.....APPELLANT
VERSUS
NGATIA KISHOYANI.....RESPONDENT

[An appeal from the award and orders of the Lands Dispute Appeals Committee, Rift Valley Province No.35 of 2008 delivered on 28th July, 2009)

JUDGMENT

The appellant was aggrieved by the decision of the Rift Valley Appeals Committee rendered on 28th July, 2009. In that decision, the Appeals Committee declared that:-

“The suit land No. SISIMARA/ENTIANI/153 was initially a gift land given to the mother of the appellant and the respondents and should be registered as such “Gift land” given to one family

Therefore it is hereby ordered that the title NO.SISIMARA/ENTIANI/153 measuring 9.51 HA issued to Kirrinkai Kishoyani ID.No. 2295918 be cancelled with immediate effect so as to give room for sub-division of the gift land amongst the family as follows:

KIRINKAI KISHOYANI - 5 ¾ acres

NGATIA KISHOYANI - 5 ¾ acres

LEISE KISHOYANI - 5 ¾ acres

NCHOKI KISHOYANI - 5 ¾ acres

23 Acres”

The appellant, who is the registered proprietor of the suit property is challenging that decision in this appeal on the grounds that:

- i) he was not given a hearing by the Land Dispute Tribunal;
- ii) the evidence of one witness, Dereki Kishoyani was fraudulently recorded in favour of the respondents;
- iii) he is the absolute owner of the suit property, which was a gift from an uncle.

The respondent, despite service with the appeal and the hearing notice, did not attend court to respond to the above grounds.

I have read the written submission filed by learned counsel for the appellant as well as the authorities cited. Before I consider this appeal and the submissions, a brief background is called for.

In the year 2008, the respondent, Ngatia Kishoyani and his younger brother, Leisi Kishoyani referred to Olkurio Land Dispute Tribunal claim No.1 of 2008 against their elder brother, the appellant, who is registered as the ownership of the suit property. In the course of the hearing before the Tribunal, evidence was presented by the respondents and their witnesses who included their mother, Nchooki Kishoyani that the suit property was given to their mother by her three brothers when she returned to her parent's home from Keekonyokei (Mosiro) where she had been married. Her brothers sympathized with her plight and gifted to her the suit property where she settled with her three sons, the parties in this dispute.

It was the evidence of the respondents that because they (including their mother) did not have identification cards, it was decided that the property be held by the eldest son, the appellant, on behalf of the rest of the family. The younger brothers and their mother were surprised to learn that the appellant had registered the entire property in his name.

As the appellant did not participate in the hearing, the Tribunal delivered its decision stating as follows:

“The land in question belongs to Nchooki Kishoyani and not Kirrinkai alone. Therefore the land Dispute Tribunal is of the opinion that the land in dispute SHOULD BE SUB-DIVIDED INTO THREE EQUAL PORTIONS and the first title deed be revoked by the Land Registrar, Narok. The Land Dispute Tribunal would like to request the Principal Magistrate Court, Narok to order the Land Registrar Narok to cancel the title deed NRK/CIS/ENTIANI/153 which belongs to KIRRINKAI Kishoyani and make fresh Green Cards for the three brothers and three title deeds.”

This is the decision that aggrieved the appellant and from which he appealed to the Appeals Committee.

I have earlier on set out the finding of the Appeals Committee which upheld the above decision of the tribunal. The sole question is whether the Appeals Committee erred in upholding the decision of the Tribunal and in making the orders it made. The basis of the appeal to the Appeals Committee was the decision of the Tribunal. It is here that I must start.

The jurisdiction of the Tribunal is stipulated under **Section 3(1)** of the **Land Disputes Tribunal Act**, and is limited to the:

- a) division of, or determination of boundaries of land, including land held in common;
- b) a claim to occupy or work land; or
- c) trespass to land.

The claim by the respondents can be identified from the evidence on record.

The parties' mother Nchooki Kishoyani testified before the Tribunal as follows:

“I decided to offer the piece of land to my elder son Kirrinkai to be the custodian of the other two young siblings (Ngatia & Leisi). I believed in him since I did not expect that he will come and deny the rest the land.”

The witness also testified before the Appeals Committee saying that:

“I was given a *shamba* as big as 23 acres. My son, Kirrinkai acted as the trustee of all family affairs because he was the elder son and again above 18 years and that he had an identity card a chance he

cleverly used to do the transaction of transferring the suit land to his name.”

All the witnesses reiterate this position. It is clear from that position that the claim against the appellant was based on trust. Both the Tribunal and the Appeals Committee, in terms of **Section 3** of the aforesaid Act have no jurisdiction to entertain disputes involving trusts.

Their decision to revoke the appellant’s title which is registered under the **Registered Land Act** and directing the sub-division of the suit property was clearly beyond them. While I have no doubt reading the proceedings that the respondent’s claim has some merit, but it is the forum before which he and his brother placed it that is the problem.

From the appellant’s own admission before the Appeals Committee, it is apparent that the suit property was given to his mother by his uncles and also given to him by one of his uncles. But this confusion has nothing to do with the matters enumerated in **Section 3(1)** of the **Act**.

This appeal succeeds and is allowed. The decisions of the Tribunal and the Appeals Committee are set aside.

I make no orders as to costs.

Dated, Signed and Delivered at Nakuru this 17th day of February, 2012.

**W. OUKO
JUDGE**