



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CIVIL APPEAL 38 OF 2007

NJIRU MUTHATHAI APPELLANT

VERSUS

ANISIA NJURA NJIRU RESPONDENT

(An Appeal from the finding and award of Eastern Provincial Land Disputes Appeals Committee read on 19th April 2007).

J U D G M E N T

This Appeal arises from the decision of the Land Disputes Appeals Committee in Appeal case No.124 of 2006. The Appeals Committee had upheld the decision of Embu District Land Tribunal No.74 of 2006 between the Respondent and her children against the Appellant who is their father.

The decision by the District Land Tribunal was that the Land Kagaari/Kigaa/4548 be subdivided into three portions of 1 acre, 1 acre and 2½ acres and the same be registered in the names given. The Appeals Committee upheld the decision and gave the parties who are not beneficiaries an order to vacate within one month.

The Appellant being dissatisfied with this decision has appealed against it raising 8 grounds. The are;

1.The Land Disputes Appeals Committee erred in law in not finding that two acres on land parcel No.Kagaari/Kigaa/4548 had been sold to one George Kaaria Nchebere a purchaser.

2.The Land Disputes Appeals Committee erred in law in finding that George Kaaria Nchebere did not give the Appellant any money contrary to express provision of a Sale Agreement dated 16th February 2006 and the Appellant's evidence.

3.The Land Disputes Appeals Committee erred in law in failing to acknowledge and award the purchaser's rights to one George Kaaria Nchebere.

4. The Land Disputes Appeals Committee erred in law in not giving the purchaser one George Kaaria Nchebere a chance to be heard.

5. The Land Disputes Appeals Committee erred in law in holding that the Appellant wanted to subdivide his land into 3 portions of 2½ Acres; 1 Acre and 1 Acre, contrary to his statement on oath and subdivision done by a surveyor and forwarded to the Land Board for consent.

6. The Land Disputes Appeals Committee erred in law in acting outside its jurisdiction.

7. The Land Disputes Appeals Committee erred in law in making an order for eviction in excess of its jurisdiction.

8. The Land Disputes Appeals Committee erred in law in purporting to award the suit land L.R. NO. KAGAARI/KIGAA/ 4548 to Anisia Njura Njiru without cognizance of the fact she had deserted the matrimonial home.

Mr Morris Njage for the Appellants in his written submissions argued that the Appeals Committee lacked jurisdiction to deal with the matter before it. He cited the case of **MARIGI –VS- MURIUKI & OTHERS [2008] 1 KR (G & F) 1073 at page 1074** where it was held as follows;

1. The rights of a registered proprietor of land under the Registered Land Act are absolute and indefeasible and only subject to rights and encumbrances noted on the register or overriding interests set in section 30 of the Act.

2. However the Law of Succession recognized the rights of wives and children over their husbands or father's estate. These rights are inchoate in that they accrue after death and are not otherwise legally enforceable.

He further submitted that the land in question was land registered under the Registered Land Act and could not have been dealt with by the Tribunal.

Mr. Gitonga for the Respondent opposed the appeal. He submitted that the Appellant had acquiesced himself to the jurisdiction of the Appeals Committee and could not later be heard to say it lacked jurisdiction.

He says grounds 1,2,3 and 4 did not lie because **GEORGE KAARIA NCHEBERE** was not a party to the proceedings. He submitted that the Tribunal had power under section 3(a) to hear the dispute. And the Respondents were not claiming ownership. He also cited Article 45(3) of the Constitution which has to be upheld to protect families/children from husbands/fathers who would want to dispose of lands to punish wives and children.

The matter before the District Tribunal was filed by the Respondent with her children because apparently they were not happy with the way the Appellant was disposing of the family property and not giving the complainants anything. And being dissatisfied with the decision of the Tribunal he Appealed to the Provincial Appeals Committee which also made a decision which upheld the decision which did not satisfy him. He therefore Appealed to this Court.

The issues this Court will deal with are simply issues of Law.

Did the Appeals committee have jurisdiction to uphold the decision of the Lands Disputes Tribunal? It's only a right/correct decision that is upheld.

The mandate of the Lands Disputes Tribunal was found in section 3(1) of the now repealed Land Disputes Tribunals Act No.18/90. It outlined what the Tribunal could do which included Disputes as to Division of or determination of boundaries to land; claim to occupy or work and, trespass to land.

There are many authorities which indicate clearly that the District Land Disputes Tribunal and the Land Appeals Committees did not have jurisdiction to deal with issues of title or interest in land. Disputes over contracts are also not under that jurisdiction. **REF: WAMWEA –VS- CATHOLIC DIOCESE OF MURANGA REGISTERED TRUSTEES [2003] KLR 389.** Counsel for the Respondent had indicated that the Appellant had acquiesced himself to the jurisdiction of the Land Appeals Committee. He exercised his rights of Appeal under section 8(1) of the repealed Land Disputes Tribunal’s Act.

Secondly these were ordinary unrepresented parties and it is the committee which was expected to know it’s jurisdiction and that of the Tribunal below it. Jurisdiction is everything. It is not created when parties appear or submit themselves to a forum **“Once a nullity always a nullity”**.

REF: REPUBLIC-VS- JUDICIAL COMMISSION OF INQUIRY INTO THE GOLDENBERG AFFAIR AND 3 OTHERS EXPARTE MWALULU & 8 OTHERS MISC. COURT OF APPEAL NO.1279 OF 2004.

Section 7(2) of the Land Disputes Tribunal’s Act provided;

“The Court shall enter Judgment in accordance with the decision of the Tribunal and upon Judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.”

There is no where indicated that the Appeals Committee could issue execution Orders. It was the Magistrate’s Court which could enter Judgment, prepare a decree and start the execution process.

Mr. Gitonga has also submitted that the Respondent is not claiming ownership but disputing the division and a claim to occupy land being family members. The truth of the matter is that the land L.R. NO. KAGAARI/KIGAA/4548 is registered in the names of the Appellant as an absolute proprietor. He was then protected by section 27, 28, 30 of the now repealed Registered Land Act and his title is indefeasible.

The two Tribunals as was held in the cases quoted above and **BEATRICE M. MARETE –VS- REPUBLIC & OTHERS (UR)** lacked jurisdiction to interfere with title. I agree with Mr. Gitonga that the 2010 Kenya Constitution protects family and children from dissident husbands and fathers who selfishly dispose of family property. However this must be done within the accepted legal framework. The Land Disputes Tribunal’s Act No.18/90 was apparently not one of them. Even as I allow the Appeal the Appellant is advised to consult his family before trying to dispose of any land.

I therefore find that the decision of the Land Disputes Tribunal and the Provincial Land Appeals Committee were made without jurisdiction.

I therefore allow the Appeal. The said decisions are quashed and any Orders emanating therefrom are set aside.

Each party to bear his/her own costs.

DATED, SIGNED AND DELIVERED AT EMBU THIS 21ST DAY OF JUNE 2012.

**H.I. ONG’UDI
JUDGE**

**In the presence of;
Mr. Njage for Appellant
C/C - Njue**