



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CIVIL APPEAL CASE NO. 85 OF 2009

GACHANJA GITAU.....APPELLANT

VERSUS

MWANGI GITAU.....RESPONDENT

(Being appeal from the judgment of the Central Provincial Land Disputes Appeals Tribunal

delivered on 29th June 2006 vide claim No. Murang'a 11 of 2006)

JUDGMENT

This judgment rises from the appeal against the decision of the Central Province Land Disputes Appeals Committee delivered on 29th June 2006 vide claim No. Murang'a 11 of 2006. the history of the dispute begun when Mwangi Gitau hereinafter referred to as the respondent filed a complaint before the Murang'a Land Disputes Tribunal, claiming to be entitled to the parcel of land known as L.R. NO. 11/GIKANDU/372. the Respondent claimed that the land was registered in the name of Waithaka Gitau also known as Mwangi Gitau in trust for his father, the late Gitau Wagerere. Mwangi Gitau, the appellant herein, denied the Respondent's claim. The Murang'a Land disputes Tribunal heard the complaint and decided in favour of the Respondent. The Tribunal came to the conclusion that the parcel of land known as **LOC. 11/GIKANDU/372** was kept under the name of Mwangi Gitau on 11th May 1963 a period of 20 years when their father died. The tribunal concluded that the land belonged to Mwangi Gitau. Being aggrieved by the aforesaid decision, Gachanja Gitau, Maina Gitau and Teresiah Mbeere preferred an appeal to the Central Province Land Disputes Appeal's Committee. The Appeals Committee heard the appeal and dismissed it, thus affirming the decision of the Murang'a Land Disputes Tribunal.

Being further aggrieved, Gachanja Gitau, the appellant herein, preferred this appeal. On appeal, the Appellant put forward the following grounds in his Memorandum of Appeal:

1. ***The tribunal has no jurisdiction to determine matters of trust as in this case.***
2. ***The tribunal failed to take into account the fact in Law the act of Limitation does not apply to a trust and the 20 years they took into account is immaterial.***
3. ***The tribunal did not take into account that trust was admitted by the respondent.***
4. ***These plus other grounds to be adduced at the hearing hereof form the basis of this appeal.***

This certified that the appeal raises serious points of law. When the appeal came up for hearing, learned counsels appearing in the appeal recorded a consent order to have the appeal disposed of by written submissions. At the time of writing this judgment, the Appellant's counsel was the only party who had filed his submissions. I have reconsidered the complaint that was before the tribunal and the submissions filed before this court. The main issue argued on appeal is that the tribunal and the Appeals committee had no jurisdiction to hear and determine a claim based on trust. A careful perusal of the complaint filed before the Murang'a land disputes Tribunal will reveal that the Respondent's claim was based on trust. Section 3 of the Land Disputes Tribunals Act No. 18 of 1990 clearly defines the disputes which can be entertained by the tribunal. Those disputes did not include a claim based on trust. With respect, I agree with the submissions of Mr. Waiguru that the Muranga Land Disputes Tribunal and the Central Province Land Disputes Appeals Committee did not have jurisdiction to hear and determine the dispute. In the end the appeal is allowed. The decision of the tribunal and the Appeals committee are hereby quashed and set aside. Since the dispute involves members of the same family, I direct that each party meets his or her own costs.

Dated and delivered at Nyeri this 25th day of February 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Mugo holding brief Kimwere and no appearance for Waiguru for Appellant.