



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL NO. 124 OF 2001

MWANGI MBARU.....APPELLANT

VERSUS

KARIUKI MBARU.....RESPONDENT

(Arising from the judgment of the Provincial Land Disputes Appeals Committee at Nyeri in Land Dispute appeal No. 2 of 2001)

JUDGMENT

This judgment is the result of the appeal filed by Mwangi Mbaru, the Appellant herein, against the judgment of the Provincial Land Disputes Appeal's committee at Nyeri vide Land Disputes Appeal case no. 2 of 2001. When this appeal came up for hearing this court gave directions which were to the effect that the appeal be determined by written submissions. At the time of preparing this judgment, the Appellant was the only party who had filed his submission

I have re-evaluated the evidence on record. I have further considered the appellant's written submissions. It is convenient at this stage to set out in brief the background of this appeal before looking at the merits of the appeal.

One Kariuki Mbaru, the appellant's brother, now deceased had filed a complaint before the Murang'a Land Disputes Tribunal claiming to be give a portion measuring 1.3 acres to be excised from L.R. no. Loc.14/Kagumoini/809. The aforesaid land is registered in the name of the appellant. Kariuki Mbaru has since then died hence he had to be substituted by Peter Muchoki Kariuki, his legal representative The Respondent herein. The aforesaid land is registered in the name of the appellant. The basis of the Respondent's case before the Land Dispute's Tribunal was that he bought 0.9 acres and that 0.5 acres belong to his mother. The Appellant denied the claim. The tribunal heard the dispute and in the end it agreed with the Respondent. The tribunal made a decision which in effect would lead to the subdivision of the parcel of land known as Loc.14/Kagumoini/809 into two portions to be shared in the following manner:

Kariuki Mbaru	-	1.3. acres
Mwangi Mbaru	-	3.1 acres.

The Appellant was unhappy with the Murang'a Land Disputes decision. He preferred an appeal to the

central province Land Disputes Appeals Committee. The appeals committee heard and dismissed the appellant's appeal on 2nd August 2001. That decision prompted the Appellant to file this appeal.

On appeal, the Appellant put forward the following grounds in his memorandum of appeal:

- 1. The Committee erred in law in upholding the Murang'a Land Disputes Tribunal's award whose upshot was to disinherit the appellant's brother's**
- 2. The committee erred in law in deciding on an issue that was not placed before it for its consideration and more so in light of the disputant's consent that all they wanted was a survey of the parcel they were occupying.**
- 3. The committee erred in law in upholding the Murang'a Land Disputes Tribunals award whose effect was to divest the Appellant of the title no. Loc.14/Kagumoini/809 and which award was inconsistent with the provisions of the registered Land Act.**
- 4. The committee further erred in law in upholding the Murang'a Land Disputes Tribunals Award which was ultra vires section 3(1) of the Land Disputes Tribunal Act No. 18 of 1990.**

When the appeal came up for hearing, Mr. Gacheru, learned advocate for the Appellant argued one main ground in his written submissions. It is argued that the appeals committee and the Land Disputes Tribunal had no jurisdiction to hear and determine such a dispute. I have carefully looked at s. 3(1) of the Land Disputes Tribunals Act and it is clear that the Tribunal and the Appeals committee determined a dispute relating to title to land. The two bodies therefore acted outside the provisions of section 3(1) of the Land Disputes Tribunals Act. I am therefore convinced that the appeal is well founded.

The appeal is allowed. The awards made by the Murang'a Land Disputes Tribunal and that of the Central Province Appeals committee are set aside. Since the dispute involves members of the same family, I direct that each party meets his own costs.

Dated and delivered this 8th day of April 2011.

J.K. SERGON

JUDGE

In open court in the presence of Gitibi h/b Gacheru for the Appellant. N/A for the Respondent.

J.K. SERGON

JUDGE