



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CIVIL APPEAL CASE NO. 8 OF 2009

EVAN GITHINJI MUNU.....APPELLANT

VERSUS

ESTHER WAMBUI GITHINJI.....RESPONDENT

(Being an appeal from the Award of the Provincial Land Disputes Appeals Committee at Nyeri in Appeal Case No. 5 of 2008)

JUDGMENT

This judgment is the outcome of the Appeal against the decision of the Provincial land Disputes Appeals Committee read in court on 15th January 2009. The background of the appeal began when Esther Wambui Githinji, the Respondent herein, filed a complaint before the Land Disputes Tribunal, Central division, claiming to be entitled to a portion of the parcels of land known as L.R. NO. INOI/KARIKO/627 and L.R. NO. INOI/KARIKO/1227. The Respondent named Evan Githinji Njogu as the Defendant in the dispute. The Land Disputes Tribunal, Central Division, heard the dispute and on 24th April 2008, it made a decision which was to the effect that:

- (i) ***L.R. NO. Inoi/Kariko/627 should be shared in equal measure between***
- ***Sammy Munene Githinji,***

 - ***Ephantus Bundi Githinji and***

 - ***Cyrus Karimi Githinji.***
- (j) ***L.R. NO. Inoi/Kariko/1227 be shared as follows:***

(a)

- *Evan Githinji*
- *Esther Wambui Githinji an* *1 acre jointly*
- *May Wanjiku Githinji*

(b)

- *Fredrick Thiaka Githinji*
- *Antony Munene Githinji* *to share 2 acres in equal measure.*
- *Kinyua Githinji*

Evan Githinji Munu, the Appellant herein, was not satisfied with the Land Disputes Tribunal's decision. He then filed an appeal before the Provincial Land Disputes Appeals Committee. The Appeals Committee heard the appeal, dismissed it and affirmed the decision of the Central Division Land Disputes Tribunal. Being further aggrieved, the appellant preferred this appeal. He named Esther Wambui Githinji as the Respondent.

On appeal, the Appellant listed the following grounds in his Memorandum of appeal:

- 1. *That the Provincial Land Disputes Appeals Committee – Nyeri, erred in law when it upheld and confirmed the award of the Kirinyaga Central Division Land disputes Tribunal which award was a nullity.***
- 2. *That the tribunal erred in law when it acted beyond its jurisdiction as contained in the Land Disputes Tribunal Act Sec 3 when it purported to entertain, hear and determine a claim over a land Title registered under Cap 300 Laws of Kenya.***
- 3. *That the tribunal acted in excess of its jurisdiction when it ordered the sharing out of the appellants Land against his wishes and it total disregard of the provisions of Cap. 300 Laws of Kenya.***
- 4. *That the proceedings of the Nyeri Provincial Appeals Committee were nullity as the parties in the district Tribunal were different from those before it and that the appeal was presented and urged by a party who was not a party in the District Tribunal.***
- 5. *That both the award of the Kirinyaga Central Land Disputes Tribunal and Provincial and Disputes Tribunal Nyeri were nullity.***

When the Appeal came up for hearing, learned advocate appearing for the Appellant and the Respondent in person recorded a consent order to have the Appeal disposed of by written submissions. I have considered the aforesaid submissions. I have further re-evaluated the cases which were before the Land Disputes Tribunal and the appeal that was before the Provincial land Disputes Appeals Committee. The main ground argued on appeal is that the Land Disputes Tribunal and the Appeals Committee acted without jurisdiction when they heard and determined a dispute relating to title to land. A careful reading of the written submissions of the Respondent will reveal that the Respondent admits that the Land Disputes Tribunal had no jurisdiction to hear and determine the dispute. The respondent urged this Court to determine the issues in dispute now that it is seised with jurisdiction to do so. In my view, this ground alone will determine the Appeal, hence there is no need to consider the other grounds enumerated in the Memorandum of Appeal. I have already stated that the respondent had filed a complaint before the Land Disputes Tribunal, Kirinyaga Central Division claiming for a portion comprised in **L.R. NO. INOI/KARIKO/627** and **L.R. NO. INOI/KARIKO/1227**. At the end of the trial, the Land Disputes Tribunal awarded the Respondent 1/3 of an acre to be excised from L.R. NO. INOI/KARIKO/1227. If the Tribunal decision is implemented, it will lead to the subdivision of the aforesaid parcel of land. The main

title will have to be closed and new titles issued in respect of each subdivision. In other words, the Land Disputes Tribunal will have determined title to land. The Land Disputes Tribunal's jurisdiction is limited to determining disputes set out under *Section 3(1)* of the Land Disputes Tribunals Act No. 18 of 1990. The dispute relating to title to land is not one of those stated in the aforesaid section. With respect, I agree with the Appellant that the Land disputes Tribunal and the Provincial Land Disputes Appeals Committee acted without jurisdiction hence their decisions are null and void hence they serve no useful purpose.

In the end, the appeal is allowed. Consequently the decision of the Land Disputes Tribunal and that of the Provincial Land Disputes Appeals Committee are set aside. Since the dispute involves members of the same family, I direct that each party meet his or her own costs.

Dated and delivered at Nyeri this 17th day of June 2011.

J. K. SERGON

JUDGE

In open court in the presence of Mr. Muthui holding brief Wanjiru for Respondent and no appearance Miss Mwai for Applicant.