



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL NO. 15 OF 2009

MAINA KARUIRE.....APPELLANT

VERSUS

GEOFFREY KIRECHO KAMIRU.....RESPONDENT

(Being an appeal from the Award of the Central Provincial Appeals Committee decision in claim No. 10 of 2006 Murang'a)

JUDGMENT

Geoffrey Kirecho Kamiru, the Respondent herein, filed a complaint before the Kiharu land Disputes Tribunal claiming he purchased a portion measuring 1 acre of **LOC. 20/GIKINDU/MIRIRA/4883** from the registered owner Maina Karuire, the appellant herein. The Land Disputes Tribunal heard the dispute and in the end gave the Respondent judgment as prayed. The Appellant was aggrieved hence he filed an appeal before the Provincial land disputes Appeal's Committee. The Provincial land Disputes Appeals Committee, dismissed the Appellant's appeal and upheld the decision of Kiharu Land Disputes Tribunal. The appellant again was aggrieved hence this appeal.

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

1. ***The appeals committee wrongly upheld an alleged sale of land which was stale and contrary to the Limitation of Actions Act as it was entered way back in 1984.***
2. ***The appeals committee failed to realize that the tribunal case was flawed in that the sale agreement involved the land of a deceased person.***
3. ***The appeals committee wrongly upheld the Tribunals decision on a sale of land for which it had no jurisdiction.***
4. ***The appeals committee failed to find that for agricultural land the sale was void and no order for specific performance could be made in the absence of land Control Board Consent and only the consideration could be refunded (subject to limitation).***
5. ***The appeals committee wrongly upheld the tribunal's award which was a dealing with title to land for which such Tribunals had no jurisdiction.***
6. ***The appeals committee's only reason for disallowing the appeal was because the respondent had allegedly cultivated the land for over 22 years. In so doing the appeals committee purported to deal with adverse possession yet the jurisdiction lay with the High Court.***

When the Appeal came up for hearing, learned counsels appearing in the matter recorded a consent order to have the Appeal disposed of by written submissions.

I have considered the rival submissions. One issue comes out clearly which I think should be decided first as it may dispose of the entire appeal. It is the submission of the Appellant that the Land Disputes Tribunal had no jurisdiction to hear and determine a dispute relating to title to land. The respondent is of the view that the tribunal did not decide on any issue relating to title to land. What comes out clearly is that the respondent too is in agreement that the Land Disputes tribunal has no jurisdiction to hear a dispute relating to title to land under Section 3 of the Land Disputes Tribunal Act No. 18 of 1990. Let me now examine the decision of the Kiharu Land disputes Tribunal which was upheld by the provincial land Disputes Appeals committee. It is apparent from the decision of the Kiharu land Disputes Tribunal that the Appellant was ordered to transfer a portion measuring 1 acre to be excised from **LOC./GIKINDU/MIRIRA/5883** to the respondent. The effect of the aforesaid decision is that the title to the parcel of land will be closed upon subdivision giving rise to new titles of subdivisions. In short, the decision of the Land Disputes Tribunal will obviously affect title to land. The Land disputes Tribunal had no jurisdiction to hear and determine disputes relating to title to land. I will allow the appeal on this ground alone.

The Appeal is allowed. The decision of the Provincial Land Disputes Appeals Committee and that of the Kiharu Land disputes Tribunal are set aside. Costs of the appeal and the tribunal are given to the Appellant.

Dated and delivered at Nyeri this 29th day of July 2011.

J. K. SERGON
JUDGE

In open court in the presence of Miss Keli h/b for Mbuthia for Appellant and Mr. Karweru h/b for Nganga for the Respondent.

J. K. SERGON
JUDGE