



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL APPEAL NO. 635 OF 2007

STEPHEN MBOTHU

NJOROGE.....APPELLANT

VERSUS

NJENGA NJOROGE &

ANOTHER.....RESPONDENT

JUDGMENT

The dispute herein involves a parcel of land known as Limuru/ Kamirithu/1139. The dispute was first heard by the District Land Tribunal, Limuru Division. This tribunal ordered that the land measuring 1.70 acres be divided among the 4 beneficiaries named in the award. Dissatisfied with the said decision the appellants moved to the Central Province Appeals Tribunal, Nyeri which made a decision confirming the verdict of the Land Disputes Tribunal, Limuru Division. However the said Provincial Tribunal allowed the aggrieved party to appeal.

The decision of the Provincial Tribunal has the following statement,

“Having heard and considered the representations of all the parties and having considered all documents submitted to us we hereby decide as follows,

- 1. The land has title.**
- 2. The matter be referred to court.**
- 3. The elders decision still stand.**
- 4. Right of appeal in 60 days allowed.**

5. Each party to pay its costs”.

That is the decision that prompted this appeal and in the Memorandum of Appeal the following grounds have been raised.

1. The Appeals Committee erred in law in failing to overturn the decision of the elders in spite of the fact that the elders acted outside their powers in arriving at the decision they did as they had dealt and interfered with the suit premises which is land already registered under the Registered Land Act Cap 300 Laws of Kenya.
2. The Appeals Committee having held that the land in issue was registered erred in law in proceeding to hold that the decision of the elders still stood and refering the parties to court as opposed to reversing the decision of the elders and dismissing the reference by the respondents herein.
3. The Appeals Committee erred in law in arriving at the decision that was self contradictory, confusing, inconsistent and against the law.

Both learned counsel for the parties herein have filed written submissions which I have noted. It is common ground that the land is registered under the Registered Land Act Cap 300 Laws of Kenya. The jurisdiction of the Lands Disputes Tribunal is set out in the Land Disputes Tribunal Act No. 18 of 1990 Section 3(1) thereof. That jurisdiction is limited to matters relating to,

- a) The division of or determination of boundaries to land including land held in common.
- b) A claim to occupy or work on land; or
- c) Trespass to land.

Going by the record before me right from the Divisional Tribunal to the Provincial Appeals Tribunal, those are not the issues that were canvassed before them. It is clear that the issues related to title and this is confirmed by the decision to subdivide the land into four portions. Clearly this was beyond the jurisdiction conferred upon the Land Disputes Tribunal under the said Act. I know there are different views by the High Court in respect of that position but with respect, the provisions of the Registered Land Act are clear and in particular Section 159.

I am unable to uphold the decision of the Provincial Appeals Tribunal and therefore this appeal must succeed. The sum is accordingly allowed. It follows that both the decision of the Limuru Land District Tribunal made on 28th July, 2003 and that of the Central Province Appeals Tribunal made on 31st May, 2007 must be set aside. The appellant shall have the costs of this appeal.

Orders accordingly.

Dated, signed and delivered at Nairobi this 20th Day of July, 2011

A. MBOGHOLI MSAGHA
JUDGE