



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL NO. 6 OF 2002

(Being an appeal from the Judgment of the Senior Resident Magistrate's Court at Embu in SPM Award Case No. 35 of 2001)

SHADRACK NJAGI NJIRU.....APPELLANT

VERSUS

NJOKA MURUAKUNYUA..... DEFENDANT

J U D G M E N T

The Appellant herein referred to as SHADRACK NJAGI NJIRU being dissatisfied by the decisions of the Embu District Land Disputes Tribunal and Provincial Land Appeals Disputes Tribunal Embu and thereafter the decision of the SPM' s court Embu in SPM Award case No. 35/2001 appealed to this court. The grounds are that:

- 1. The District land Disputes Tribunal had no jurisdiction to deal with a matter to do with title to land.***
- 2. It also erred in apportioning land into two equal portions when the Land Register showed otherwise.***
- 3. The Appeals Tribunal had no evidence on which to base its findings.***
- 4. Parties not given time to file objections.***

The Respondent Njoka Murwakunyua died and was substituted by KELLEN NJURA.

In his submission the Appellant who presented his appeal in person referred to the green cards which show that he was to get 2/3 and the deceased 1/3 of the acreage. In their decision the Tribunal decided the land be divided into two equal parts.

The Respondent produced similar green cards and she was satisfied with the decision by the tribunal. The decision complained of was made on 5/12/2000 by elders under the Chairmanship of the District Officer Manyatta. It is clear that this decision was at variance with the record in the green card at the lands registry. The green cards produced herein show that LR. NGANDORI/NGOVIO/482 is registered in the names of the Appellant and Njoka Kinyua as common proprietors. The Appellant's share is 2/3 while the deceased's is 1/3. This record has not been changed.

The elders Award cancelled the records by changing the mode of sharing to be that the land be shared into two equal portions by the Appellant and the deceased. They may have done their best but the issue is whether they had the required jurisdiction to do so. First of all the proceedings from the DC's office Embu dated 25/8/2000 do not indicate under what mandate the elders were hearing the matter. Was it under the Land Disputes Tribunal's Act or was it an Administrative exercise? It was not the court

which referred the matter to them for hearing, so it may have been under the Act No. 18/90. Whichever the case, it's only the High Court under Section 159 of the Registered Lands Act which has the power to cancel titles and deal with interest in land. There are many decisions dealing with the issue of the Limitation of jurisdiction by the land disputes Tribunals but apparently the same are not taken seriously.

Some of these decisions are:

1. Jotham Amunavi Vs The Chairman Sabatia Division Land Disputes Tribunal & Another , Civil Appeal No. 256/02.

It was held that the Tribunals lack jurisdiction to deal with matters relating to title to land and to beneficial interest in the suit land.

2. Republic Vs the Meru Central District Land Disputes Tribunal Misc. Application No. 51/05 – Meru High Court.

It was again held that Section 3(1) of the Land Disputes Tribunal Act ousted the jurisdiction of the tribunals in issues of title to land and beneficial interest in the suit land.

So in the current matter the AWARD interfered with title to land by purporting to give the Respondent more land than what was in the records at the Lands Registry. Such interference is the preserve of the High Court under Section 159 of the Registered Land Act.

I therefore find for the Appellant and nullify the Tribunal Award No. 5 of 2010 and Civil Suit Award No. 35 of 2001. They are hereby quashed and be of no effect. The District Land Registrar is hereby directed to comply with this court's earlier order dated 2nd March 2010.

Costs to the Appellant.

DATED, DELIVERED AND SIGNED AT EMBU THIS 7TH DAY OF DECEMBER 2011.

**H. I. ONG'UDI
JUDGE**