



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 28 of 2003

AMOS NGATUNYI PERMINUS..... APPELLANT

VERSUS

AMOS NGATUNYI KIBUCHI..... RESPONDENT

JUDGMENT

The appellant and respondent are stepbrothers. Their father, Perminus Kibuchi Ngatunyi had two wives, Penina Wambui who is the mother of the respondent and Dorcas wa Metumi, the appellant's mother. The respondent filed an action before the Wanguru Land Disputes Tribunal with respect to land parcel **Mwerua/Kabiriri/259** hereinafter referred to as the "*suit premises*". The respondent's case then was that the appellant grabbed the suit premises way back in 1972. In 1967, the appellant and respondent were told by their father that the suit premises were to be given to the respondent. Their father had further said that if the appellant gave out some money, he was ready to subdivide the suit premises into two equal portions. However the appellant secretly took one of the clan elders to Kerugoya Lands Office and got the suit premises transferred and registered in his name without informing their father. He therefore prayed that the tribunal do order the subdivision of the suit premises so that he could own portion thereof.

In his response, the appellant stated that he was given the suit premises by the Acera Mbari ya Karinga clan in 1961 and on 31<sup>st</sup> October, 1972 he had the suit premises transferred and registered in his name. That their father had another parcel of land which he gave to the respondent.

The tribunal having carefully weighed and evaluated the evidence tendered by the appellant, respondent and their respective witnesses reached the verdict; .....**"that the Mwerua/Kabiriri/259 was legally allocated to Mr. Amos Ngatunyi Parminus....."**

The respondent was not happy with the award aforesaid. Accordingly he filed an appeal in the Provincial Land Disputes Appeals Committee, Central province. The appeals committee after hearing the appeal ruled;-

**"The appeals committee after hearing the evidence adduced by the parties concerned decided as follows:-**

- 1. MWERUA/KABIRIRI/259 to be sub-divided equally into 3 acres each.**
- 2. Amos Ngatunyi Perminus – Respondent – to transfer 3 acres to AMOS NGATUNYI KIBUCHI from land No. MWERUA/KABIRIRI/259 each.**
- 3. The land measuring 2 acres Kabiriri/949 to be divided equally among the households – 1 acre each and the registration of this land measuring 2 acres to be produced before the appeals committee and its title deed number to be produced so that the same will be divided equally among the households concerned. (No judgment will be released unless and until the registration number in question will be produced before the appeals committee for verification purposes.)**
- 4. The documents called for above by the appeals committee have been produced on 12/6/2002 as follows:-**

(1) **Green card copy for land MWERUA/KABIRIRI/949 of 0.81 Ha registered in the name of PERMINUS KIBUCHI NGATUNYI.**

(2) **Title deed No. MWERUA/KABIRIRI/949 issued on 25/11/88**

This time around the appellant was aggrieved by the decision of the appeals committee. Hence he preferred this appeal to this court setting out 4 grounds of appeal through Messrs Kirubi, Mwangi Ben & CO Advocates to wit;

- “
1. The appeals committee erred in law in adjudicating upon a claim based on trust whereas it had no jurisdiction.
  2. The appeals committee further erred in law in purporting to order the partitioning of the suit lands when it had no jurisdiction to so order.
  3. The appeals committee erred in law in purporting to hear the matter afresh in contravention to the substantive rules governing appeals.
  4. The appeals committee erred in law in overturning the Divisional Land Disputes Tribunal's award without any legal basis for so doing.”

On 26<sup>th</sup> March, 2004, Okwengu J certified as required that there were points of law arising from the appeal as filed. The original appellant however passed on during the pendency of this appeal and an application seeking substitution dated 15<sup>th</sup> September, 2008 was heard and allowed thereby substituting Amos Ngatunyi Perminus deceased with Perminus Muthithi. When eventually the appeal came up for directions both Mr. Kirubi and Ms. Keli learned counsel for the appellant and respondent respectively agreed to canvass the appeal by way of written submissions. Those written submissions were subsequently filed and exchanged. I have carefully read and considered them together with the authorities cited.

This appeal turns mainly on the question of jurisdiction. Did the appeals committee have jurisdiction to adjudicate on a claim based on trust and did it also have jurisdiction to order the partitioning of the suit premises? The answer to these two issues is fairly simple and straight forward. It is no. Much as the respondent claims that the dispute was who ought to have occupied and or worked on the suit premises, that clearly is not the case going by the evidence of the respondent before the Wanguru Land Disputes Tribunal. He categorically stated that the appellant fraudulently got the suit premises transferred and registered in his name against their father's wishes as well as his own. He wished to have the suit premises subdivided so that he could get his portion of the suit premises. That being the case, the respondent cannot be heard to claim that the dispute between them was about a claim to occupy or work land. After all he was already in occupation of the suit premises and indeed worked the same at the time he moved to the tribunal.

Section 3(1) of the Land Disputes Tribunal Act provides that;

**“..... all cases of a civil nature involving a dispute as to:**

- (a) the division of, or the determination of boundaries to land including land held in common;**
- (b) a claim to occupy or work land or**
- (c) Trespass to land**

Shall be heard and determined by a tribunal established under section 4 of the said Act. This section clearly provides parameters within which a tribunal should determine the matters before it. There are various decided cases whose jurisprudence clearly show that if such the tribunal acts in excess or want of jurisdiction, its decision would be annulity.

It is apparent that the suit premises were a first registration in favour of the appellant. That notwithstanding, the Provincial Land Disputes Appeals Committee in its award purported to order subdivision of the suit premises into 2 equal portions. The appeals committee was not clothed with power and or jurisdiction to either order the subdivision and or transfer of the suit premises being a first registration under the registered land Act. In so ordering, the appeals committee acted ultra vires its authority, power and jurisdiction as conferred to it in terms aforesaid.

There is no doubt at all that the appeals committee was alive to the fact that the suit premises were registered under the registered land Act since it called for the green card and the title deed to the suit premises. Those documents were availed and showed clearly that the appellant was the registered proprietor of the suit premises. In ordering the subdivision of the suit premises, the appeals committee was clearly deliberating on the issue of ownership of and or title to the suit premises which is completely outside its mandate. Again it would appear that in ordering the subdivision, the appeals committee was under the illusion that the appellant had the suit premises transferred and registered in his name in trust for himself and the respondent. That again is not the province of the tribunals established under the Land Disputes Tribunals Act.

That being my view of the matter I find the appeal merited. Accordingly, I allow the appeal and set aside the award of the Provincial Land Disputes Appeals Committee, Central Province dated 13<sup>th</sup> June, 2002. I make no order as to costs since the parties in this appeal are close relatives. Indeed they are step brothers.

*Dated and delivered at Nyeri this 25<sup>th</sup> day of January 2010.*

**M.S.A. MAKHANDIA**

**JUDGE**