



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 29 of 2003

DAMARIS NYAMBURA MUREU APPELLANT

VERSUS

1. ISAAC KAMANDE MUCHOKI

2. JOHN M. WANYOIKE..... RESPONDENTS

JUDGMENT

The appellant was the defendant before the Maragua Land Disputes Tribunal whereas the respondents were the plaintiff. The respondents had sued the appellant with regard to land parcel LOC. 6/GIKARANGU/1432 hereinafter referred to as “the suit premises” which according to them had been left to the appellant by their grandmother so that she would give it to them once they came of age. In other words the suit premises were given to the appellant to hold in trust for the respondents as they were young boys. When though they came of age and requested the appellant to transfer the suit premises to them, she refused.

The appellant’s response was that the mother of the respondents was her unmarried sister.

The tribunal having carefully listened to the respondents, appellant and their respective witnesses reached this verdict:-

AWARD

“The panel of elders unanimously agreed that parcel No. Loc. 6/Gikarangu/1432 consisting of 4.5 acres to be subdivided as follows:-

- 1. Damaris Nyambura Muriu - 1 acre**
- 2. Isaac Kamande)
John Muthee)
Mary Wairimu) - 3.5 acres
Evelyn Wanjiru)**

The plaintiffs to give the defendant a He-goat in form of money Kshs.5000/- and a bag of sugar in form of money Kshs.4,000/-. Totalling Kshs.9,000/-.”

The appellant was dissatisfied with the award. Therefore she lodged an appeal as required to the Provincial Land Disputes Appeals Committee, Central province. The appeal was deliberated upon and a decision arrived at in these terms:-

AWARD

“To uphold the decision of Maragua Land Disputes Tribunal to the effect that: To be subdivided as follows:-

1. **Damaris Nyambura Mureu - 1.00 acre**

2. **Isaac Kamande**
)
 John Muthee
)
 Mary Wairimu) - 3.5 acres

 Evelyn Wanjiru)

3. **The plaintiffs to give the defendant the following as compensation for her services:-**
 - (a) **Kshs.5000/- for her goat.**
 - (b) **1 bag of sugar in form of money Kshs.4000/-.**

Total Kshs.9,000/-.”

Still the appellant was not happy. Therefore he came knocking to the doors of this court by way of second and perhaps final appeal. Through a memorandum of appeal drawn by Messrs Mathenge & Muchemi advocates, she complained;- **“That neither the District Land Disputes Tribunal nor the Provincial Land Disputes Tribunal had the jurisdiction to entertain this matter touching (sic) the issues of Title Deed. That failure of justice was therefore occasioned.”**

On 26th October, 2009, the appeal came up for hearing before me having earlier been certified by Okwengu J that it raised an issue of law. On the aforesaid date of hearing Mr. Nderi and Mr. Wangai, learned counsel for the appellant and respondents respectively agreed to canvass the same by way of written submissions. Those submissions were subsequently filed and exchanged. I have carefully read and considered them.

The issue in this appeal is whether both tribunals had powers to order subdivision of the suit premises on the basis of trust. The provisions of section 3(1) of the Land Disputes Tribunals Act are very clear as to the jurisdiction conferred on tribunals established under the Act. Their jurisdiction is limited 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.”***

From the foregoing, it is quite clear that the tribunals have no power or jurisdiction to entertain matters touching on trust, family or otherwise. Much as the act gives powers to the tribunals to decide on the issue of subdivision of land including land held in common, this was not such case. The suit premises were registered in the name of the appellant solely. Consequently, it cannot be correct as argued by Mr.

Wandai that the tribunal was right in ordering the subdivision of the suit premises as it was land held in common.

On the other hand and as correctly submitted by Mr. Nderi, to the extent that the respondent's claim was founded on trust, there was no claim capable of being entertained or adjudicated upon by the tribunal by virtue of section 3 of the Land Disputes Tribunals Act. In the circumstances, both the appeals committee and the Maragua Land Disputes Tribunal fell in error when they entertained the respondents' claim against the appellant on that basis.

In any event by ordering subdivision of the suit premises the two tribunals were clearly interfering with the appellant's title to the suit premises. To carry out such an order, the appellant would be compelled to surrender her original title to the suit premises for cancellation so that fresh titles can be issued upon subdivision. The tribunal has no such jurisdiction, more so, considering that this was a first registration.

That being my view of the matter I would allow the appeal and accordingly set aside the respective awards of Maragua Land Disputes Tribunal and Provincial Land Disputes Appeals Committee, Central province. However I make no order as to costs.

Dated and delivered at Nyeri this 25th day of January 2010.

M.S.A. MAKHANDIA

JUDGE