



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
Civil Appeal 64 of 2008

FRANCIS WAMWEA NJERU.....APPELLANT

Versus

STEPHEN MAINA NJERU.....RESPONDENT

*(Appeal against the award of the Provincial Land Disputes Appeals Committee
Central Province, Kirinyaga No.3 of 2004 dated 24th July, 2008.)*

J U D G M E N T

Francis Wamwea Njeru, the appellant herein was aggrieved by the award made by the Provincial Land Disputes Appeals Committee Central Province dated 24th July, 2008. The award was in these terms:-

“...According to this committee, the land should be shared as follows:-

1. Stephen Maina Njeru – 3.5 acres
2. The remaining piece of land should go to Francis Wamweya Njeru.
3. Any party not satisfied could appeal to the High Court within 30 days of this award.

Parties to bear their own individual costs.”

The appellant was not satisfied with the award hence this appeal. Through Messrs Kebuka Wachira & Company Advocates the appellant has raised 4 grounds of appeal in his memorandum of appeal dated 21st August, 2008. These are;

- “1. The Provincial Land Disputes Appeals Committee acted ultra vires its jurisdiction by entertaining a claim based on trust.
2. The Appeals Committee erred in law in interfering with the appellant’s registration (being a first registration) of the land reference number KIINE/NYANGIO/440.
3. The Appeals Committee erred in making a finding that the appellant held the suit land in trust for the respondent and yet it was made abundantly clear that the respondent was born more than 6 years after the demarcation and registration of the suit land.

4. The Appeals Committee as well as the District Land Disputes Tribunal erred in law entertaining a claim whose intention was to challenge the title to land.”

On 5th October, 2009, when the appeal came up for directions, parties agreed to canvass the same by way of written submissions. Those submissions were subsequently filed and exchanged. I have carefully read and considered them together with the authorities cited.

Contrary to the submissions by the respondent, this appeal was not filed out of time. From the record both original and typed, this appeal was filed on 22nd August, 2008. The award, the subject of this appeal was given on 24th July, 2008. Accordingly, the respondent cannot be right in stating that the appeal was lodged out of time and without the leave of court. It is not true therefore as the appellant submits that this appeal was lodged on 12th February, 2009 almost 8 months from the date the award was read to the parties on 24th July, 2008. I do not know where the respondent came by that information as the record is quite clear and speaks for itself.

Did the Provincial Land Disputes Appeals Committee have jurisdiction to make the award complained of? The appellant thinks it did not and I agree with him. The appeals committee entertained the claim which essentially was based on trust. The jurisdiction of tribunals established under the Land Disputes Tribunals Act is enshrined in section 3(1) thereof. These tribunals, and the appeals committee is one of them, can only entertain land disputes 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 clear and apparent that disputes or claims relating to land based on trust are not within the ambit of the said section. From the proceedings of the appeals committee it is quite apparent that the committee found that the parcel of land in question being Kiine/Ngangio/440 was family land and that the appellant held the same in trust for the respondent. This finding went beyond the jurisdiction conferred upon the appeals committee by the Land Disputes Tribunals Act.

The respondent testified before the land disputes tribunal at Baricho that he was born in 1966. The appellant got registered as the proprietor of the suit premises in 1960 a period of 6 years before the respondent was born. Even if the appeals committee had jurisdiction to entertain such a claim, how could it find in the circumstances that the appellant held the suit premises in trust for the respondent who was not alive at the time of such registration?

The appellant was the first registered proprietor of the suit premises. In other words the appellant’s registration of the suit premises was a first registration. By virtue of sections 28 and 30 of the Registered Land Act, the appeals committee had no jurisdiction to interfere with the said first registration. Further in making the said award, the appeals committee essentially was challenging the appellant’s title to the suit premises. The suit premises being agricultural land are governed by the Registered Land Act. Pursuant to section 159 of the said Act it is only this court and the subordinate

courts which have jurisdiction to hear and or entertain claims intended to challenge title to or possession of land.

For all the fore going reasons, I find the appeal merited. Accordingly it is allowed. The awards by both the Provincial Land Disputes Appeals Committee, Central Province and Baricho Land Disputes Tribunal respectively are set aside. As the parties herein are siblings, I make no order as to costs.

Dated and delivered at Nyeri this 25th January, 2010.

M.S.A. MAKHANDIA
JUDGE