



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Civil Appeal 40 of 2007

NKANABO MURIANKI.....1ST APPELLANT
VIRGINIA MUTHONI KATHIA.....2ND APPELLANT
NICHOLAS MUTEMBEI KATHIA.....3RD APPELLANT

VERSUS

AGNES CIAMBITI NGURWE.....RESPONDENT

J U D G M E N T

This appeal arises from the decision of the Eastern Provincial Land Disputes Appeals Tribunal (Committee) dated 10/4/07 in its appeal case No. 211 of 2002. The Tribunal upheld the Magumoni Division Land Disputes Tribunal award which had ordered that the 1st Appellant should give the Respondent herein 1 acre of land from plot No. 514. The same Tribunal did actually note that plot No. 594 had already been subdivided into 5 portions i.e. No. 1679-1683 and even found that the parcel on which the Respondent was residing had already been transferred to Virginia Muthoni and Nicholas Kathia. These 2 were later named as Appellants. As Mr. Mugo for the Respondent nonetheless submitted, they were not parties before the Tribunal and they were never joined as parties by an order of the court. They are therefore improperly in this appeal. I appreciate that they were affected by the decision and are interested parties but they cannot be joined as appellants without the leave of the court. I do therefore strike out their names from this Appeal. That would nonetheless leave us with the 1st appellant. I should point out at this stage that the Tribunal's award was to the effect that the Respondent be given 1 acre from plot No. 514. The record does not show who the plot belongs to and it was certainly not the plot in dispute as the plot in dispute was **Magumoni/Mwonge/594**. The Appeal Tribunal simply said that the Respondent should be given 1 acre. It did not specify the plot from which the 1 acre was to be excised. As at the time the complainant was heard before the Tribunal in Magumoni on 22/8/2004 the land in question had long been subdivided in 2001, new numbers given and the same had been transferred to different owners. That in itself would mean that the deliberations even to start with were in respect of a non existent parcel of land.

Mr. Njage for the appellant has pegged his appeal on 3 grounds namely and simply

- (i) ***Lack of jurisdiction on the part of the Tribunal to arbitrate on registered land.***
- (ii) ***Breach of the rules of Natural Justice because land belonging to other parties was taken away from them yet they had not been given a hearing and,***
- (iii) ***That the award was incapable of taking effect as the land in question had already been subdivided and transferred to other persons.***

I believe I have dealt with this last ground and made a finding on it. As at the time the complaint was filed or heard in 2004, the property in question had already changed its identity and ownership. The property deliberated on was non existent and any

decision in respect of the old parcel could definitely become impossible to implement. Mr. Mugo for the Respondent submitted in respect of this ground that the transfer was done after the complaint had been filed. With respect to Mr. Mugo, the green card in the Record of Appeal clearly shows that the subdivision was done and title closed on 23/5/2001. His submission was not therefore correct.

On the issue of breach of Rules of Natural Justice, (Ground 2) it is clear, as stated above that the land in question was already registered in other people's names. They were not heard. That in itself is reason enough to allow this appeal because no party should ever be condemned unheard. On the issue of jurisdiction i.e. Ground 1 – Mr. Mugo appears to have gotten it wrong. Mr. Njage's submission was not in respect of the composition or the territorial jurisdiction of the Tribunal. Indeed the tribunal was properly constituted and could entertain the appeal emanating from Magumoni. What Mr. Njage was referring to however was the "***Jurisdiction razione Materice***" or jurisdiction related to the subject matter. The jurisdiction razione materice of the Tribunal is clearly defined under Section 3(1) of the Land Disputes Tribunal Act. The same does not include jurisdiction or authority to determine issues of ownership of Registered Land. This was the position as reiterated by the Court of Appeal in case of **BEATRICE M'MARETE –V- Republic.**

By awarding the respondent 1 acre of land which would have to be excised from Registered Land, this would amount to interference of the Registered owner's rights of ownership – and also to alteration or cancellation of a Title Deed which the Tribunal has no jurisdiction to do.

The normal conclusion to this opposition is that this appeal has merit. All 3 grounds of Appeal have been proved. I allow the appeal and set aside the decision of the Provincial Land Disputes Appeals Tribunal dated 10/4/2007.

I nonetheless direct that each party bears its won costs given the disadvantaged situation of the Respondent herein.

W. KARANJA

JUDGE
27/04/2010

Delivered, signed and dated today at Embu.

In presence of:- Mr. Mugo for Mr. Njage for the Applicant – Respondent was absent.

W. KARANJA
JUDGE

Court:

Mr. Mugo be supplied with a copy of Court's Ruling.

W. KARANJA
JUDGE