



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Appeal 13 of 2009

JAPHET MUNDI MATI APPELLANT

VERSUS

M'ARIBU M'ATHAMBU RESPONDENT

(Being an appeal against the award of the

Provincial Land Disputes Tribunal (Eastern Provincial Appeal Case No. 45 of 2008 delivered on 18th December 2008)

JUDGMENT

This appeal relates to a decision made by the Provincial Land Dispute Tribunal sitting at Embu in case No. 45 of 2008. That decision was made on 8th December 2008. The decision involved the parcel number *Abothuguchi/L-Kaongo/856* which is registered in the name of the appellant. The respondent who is the father of the appellant alleged before the Land Dispute Tribunal and also before the Appeals Committee that he had purchased that parcel of land from a person called Antony Mukira. He sent the appellant, his son, to obtain consent before the Land Control Board for that transaction but instead of the son doing as he had been told had the property registered in his name. The Appeals Committee in considering the matter reached the following decision:-

“RULING

Although this tribunal has no jurisdiction to conduct cases involving a registered parcel of land this involves family members and according to customary law this parcel cannot allow one son to grab his fathers parcel of land which is intended to benefit the whole

family him included (the defendant) Japhet Mundi Mati. We have ordered the Land Registrar to transfer the Land No. Abothuguchi/L-Kaongo/586 from Japhet Mundi Mati to M'Aribu, M'Athambu.”

The jurisdiction of the Tribunals is set out in Section 3 (1) of the Land Dispute Tribunal Act. That Section provides as follows:-

“3. (1) Subject to this Act, 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.”

Looking at the jurisdiction set out in that section, it is clear that the Appeals Committee exceeded their jurisdiction by ordering the appellant to transfer the parcel of land to the respondent. The issue of the tribunals acting in excess of their stated jurisdiction has received much judicial discussion in many decisions. Justice Maraga in the case **Republic Vs.**

Msambweni Land Disputes Tribunal and others ex parte Sogno [2007] 2 EA stated:-

“The Land Disputes Tribunals should know that being creatures of statute they can only do what the statute, that is the Land Disputes Tribunal Act Number 180 of 1990 authorizes them to do. They have no powers to deal with matters of title to land. They have no powers to revoke any title and have one issued to somebody else as they purported to do in this case. They also have no powers to re-visit disputes that have been determined.”

The holding of the judge in this case is very pertinent to our present case. The Appeals Committee had no power or jurisdiction to order the transfer of the parcel of land to the respondent's name. the Court of Appeal in the case **Jotham Amunavi Vs. The**

Chairman Sabatia Division Land Disputes Tribunal & Ano. Civil Appeal No. 256 of 2002 in considering the Tribunals acting in excess of their jurisdiction had this to say:-

“The implementation of the decision of the tribunal entails the sub-division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (See Section 89 of the R.L.A.)

It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of Section 3(1) of the Land Disputes Tribunal Act. By Section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrate's Court in cases where such latter court has jurisdiction.”

As can be seen from that decision, the right forum which ought to have entertained the claim by the respondent ought to have been the High Court or the Resident Magistrate Court where it has jurisdiction. As can be seen from the reproduced decision from the Appeals Committee they were very aware that they had no jurisdiction to entertain the respondents claim but in any case gave orders as sought on the basis that the matter involved family members. The fact that the parties are related did not cloth the Appeals Committee with the jurisdiction to entertain the respondent's claim. For the reasons stated above, the appellant appeal has merit and does succeed. The judgment of this court is as follows:-

- 1. The decision of the Appeals Committee sitting at Embu in Case No. 45 of 2008 dated 8th December 2008 is hereby set aside and is substituted by an order dismissing the respondent's claim before it and before Land Dispute Tribunal Case No. 19 of 2007 Meru Central District**
- 2. Since the matter involves family members, there shall be no orders as to costs.**

Dated and delivered at Meru this 26th day of July 2010.

MARY KASANGO
JUDGE