

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 29 of 2009

PETER GATHIRU RURIGI.....1ST APPELLANT

AGNES MWIHAKI RURIGI.....2ND APPELLANT

VERSUS

MICHAEL GATHIRU RURIGI.....RESPONDENT

JUDGMENT

At the centre of this appeal is a parcel of land title No.Kiambaa/Kanunga/1241 which has gone through the District Land Tribunal and rested at the Provincial Land Appeals Tribunal whose decision is the subject of this appeal.

The respondent herein lost his case against the appellants before the District Land Tribunal and lodged an appeal before the Provincial Land Disputes Appeals Tribunal. That tribunal reversed the order of the District Land Tribunal and the appellants being aggrieved by the said decision lodged the present appeal.

In this appeal the two appellants fault the appeals tribunal for giving an ambiguous and unclear award. They also faulted the appeals tribunal for holding that there was a valid marriage between the 1ST appellant and the mother to the respondent one Hannah Muthoni in accordance to Kikuyu Customary Marriage.

They also complained that they were not accorded a fair hearing. Finally, they challenged the appeals tribunal in that it deliberated on matters in excess of its jurisdiction by determining issues of the respondent's right to a share of land, who otherwise has no legal right to claim ownership on a duly registered title to land under the circumstances.

Both the appellants and the respondent have filed submissions in respect of this appeal. There are no proceedings that have been annexed in respect of the Provincial Land Disputes Appeals Tribunal. What appears on the record are issues for determination set out by the appeals tribunal and thereafter the award by the members.

I have looked at the material before me. There is a title in the names of the appellant dated 10th May, 1996. It is clear therefore that both the District Land Tribunal and the Provincial Land Disputes Appeals Tribunal were dealing with registered land. The two tribunals were not mandated under the law to discuss the paternity of the respondent and that of the 1ST appellant. This is because the provision of the Land Disputes Tribunal Act No.18 of 1990 is clear as to the mandate of the tribunals. This is limited to the division of or the determination of boundaries including those held in common, a claim to occupy or work land, or trespass to land.

The respondent's claim was based on the fact that he was the son of the 1ST appellant and therefore had the right to work land. The land having been registered under the Registered Land Act Cap 300 Laws of Kenya, the operation of the Kikuyu Customary Law was ousted. This appears to be confirmed by the case of *Obiero – vs – Opiyo and others (1972) E.A 227* and *Isiroyo – vs – Isiroyo (1973) E.A page 388*.

In *Civil Appeal No.189 of 1996 Muriuki Marigi – vs – Richard Marigi Muriuki and 2 others*, the court made a finding that the claim of sons to their father's land was based on Customary Law but held that such right was excluded under Sections 27, 28 and 30, of the Registered Land Act aforesaid and therefore the son had no cause of action since the father was still alive.

The proceedings before me do not confirm that the respondent was living or working on that land. Whatever the case, any claim by the respondent against his living father is premature because, such a right is inchoate and crystallizes on the death of the father. That is not the case here. With respect therefore, the Provincial Lands Appeals Tribunal acted in excess of jurisdiction and addressed issues for orders that could not be granted under their mandate.

Accordingly, this appeal is allowed and the judgment of the Provincial Land Disputes Appeals Tribunal is set aside. The appellants shall have the costs of this appeal.Orders accordingly.

Dated, signed and delivered at Nairobi this 1st day of October, 2010.

A. MBOGHOLI MSAGHA

JUDGE