



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

Civil Appeal 47 of 2007

M'KUURA RUGOJI APPELLANT

VERSUS

PETER MURUITHANIA RUGOJI RESPONDENT

JUDGMENT

This judgment relates to the appeal against the decision of the Eastern Province Land Dispute appeals committee No. 41 of 2003 delivered on 18th April 2007.

The matter begun before the Land Dispute Tribunal when a claim was filed by the respondent seeking that he be given a portion of property No. ABOTH/KATHERI/347. It is not disputed that that property was registered in the joint names of M'Kuura Rugoji, Joseph Kiambi M'Kuura, Stanley Kithinji M'Kuura and Silas Muthuri M'Kuura. The respondent before the Land Dispute Tribunal stated that during the land demarcation period, he agreed with his brothers that he would not be registered as an owner of their family property and the reason for that agreement was to give the impression that he was landless with a view to getting land elsewhere. He stated that it was agreed with his brothers that if he was not successful in getting another piece of land they would give him his portion. He said that on returning to his brothers despite the fact that he had not been given another land they refused to share with him their land.

He further stated that he had lived and cultivated a portion of land for 14 years. The District Land Tribunal ordered the respondent to be given ½ an acre of the parcel No. 347 by the registered owners. The matter was referred to the appeals committee who found that the appeal had no merit and dismissed the same.

It is that dismissal that provoked this appeal. The appellant has brought the following grounds of appeal:-

- 1. *The Eastern Province Land Disputes Appeals committee erred in a point of law in confirming a decision which had been made by the Tribunal without jurisdiction.***
- 2. *The Eastern Province Land Disputes appeals committee erred in law in not finding that the decision of the Tribunal was in excess of its jurisdiction under the Land Disputes Tribunals Act.***
- 3. *The decision of the Eastern Province Land Disputes appeals committee is bad in law.***

Those grounds of appeal essentially refers to the appellant's argument that the appeals committee as much as the District Land Tribunal had no jurisdiction to entertain the respondent's claim. The jurisdiction of the tribunal is well set out in Section 3(1) of the Land Dispute Tribunal Act. That section provides:-

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.

That jurisdiction in that section does not extend to the tribunal having the power to order sub division of registered land and transfer to the respondent. That indeed was the decision of the Court of Appeal in the case of HCA No. 256 of 2002 **Jotham Amunavi Vrs. The Chairman Sabatia Division Land Disputes Tribunal Enos Kenyani Amunavi.** It stated as follows:-

“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 RLA.)

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 Magistrates’ court in cases where such latter court has jurisdiction.”

It is clear that the decision of the appeals committee exceeded its jurisdiction and further went contrary to the provisions of the Land Registered Act. But of the greatest concern was that the Tribunal made a decision in the absence of all the registered owners of the suit property. For that reason, I find that the appeal is merited. The judgment of this court is as follows:-

- 1. That the decision of the Eastern Province Land Disputes Appeals Committee Appeal No. 41 of 2003 dated 18th April 2007 and of the District Land Tribunal are hereby set aside and are substituted with the dismissal of the respondent’s case.***
- 2. The costs of the appeal are awarded to the appellant.***

Dated and delivered at Meru this 16th day of July 2009.

MARY KASANGO

JUDGE