



ELIUD MUTHIE NGARI APPELLANT

VERSUS

SUSAN WANGECHI NGARI RESPONDENT

(Appeal from the Judgment/Award or Order of the Central Provincial Land Disputes Appeals Tribunal at Nyeri dated 23rd day of January 2003 in Kirinyaga Land Disputes Tribunal No. 22 of 2002)

J U D G M E N T

The genesis of this dispute is a suit filed by **Susan Wangechi Ngari** hereinafter referred to as “*the respondent*” against **Eliud Muthie Ngari** hereinafter referred to as “*the appellant*” in the Baricho land Disputes tribunal. The case involved land parcel No. **Mwerua/ Gitaku/450** hereinafter referred to as “*the suit premises*”. That parcel of land is registered in the name of the appellant. The claim by the respondent was that the appellant was so registered as the proprietor of the suit premises in trust for the family. The respondent is an aunt to the appellant being a sister to the appellant’s father. The respondent claimed that she was a daughter of **Wangari Ngari** who was one of the beneficiaries of the suit premises. She had been married but for a short time. As at the time she lodged the claim she had been residing on a portion of the suit premises for well over 20 years. She had also brought up her children on the suit premises and had nowhere else to go. The appellant’s response was that much as the respondent was entitled to a portion of the suit premises he had already surrendered to her ½ an acre.

The tribunal having listened to the case of the appellant and the respondent as well as evidence tendered by their respective witnesses reached the following verdict:

“..... It is observed that this is a clan issue and both claimant and the objector have been living in the same place of land Mwerua/Gitaku/450. The claimant is a member of the family which was issued with this trust land. The objector does not deny this. He has even gone to the extent of giving the claimant half acre. The panel is convinced beyond reasonable doubt that the claimant should share with the rest of the family this piece of land. It is therefore declared that Muthie the objector to give the claimant two acres out of the five acres because Kariuki’s family have shared eight acres out of ten acres as follows:-

From five acres Mwerua/Gitaku/450

Eliud Muthie Ngari – 3 acres

Susan Wangechi Ngari – 2 acres

Eliud Muthie to sign all necessary documents to necessitate subdivision and transfer of the parcel number Mwerua/Gitaku/450. Failure to which the executive officer of the court to sign them. The costs of subdivision and transfer to be met by the claimant.....”

The appellant was aggrieved by this decision. He therefore appealed to the Provincial Land Disputes Appeals Committee, Central Province. After listening to the appeal, the appeals committee observed thus: **“..... The appellant’s family has 10 acres of land. The respondent has nil with all the family.**

The appellant was good enough to save his aunt. This was human. The elders accompanying Susan are suggesting that she be given 2 to 2½ acres. The Panel has recommended to uphold the ruling by Kirinyaga District Tribunal that Muthie the appellant give to Susan 2 acres of land from Mwerua/Gitaku/450. Eliud Muthie to be left with 3 acres from Mwerua/Gitaku/450.....”

The appellant was not deterred by this outcome. His next stop was this court by way of second and final appeal. On 19th March 2003, he lodged the instant appeal. He advanced only two grounds in support of the appeal to wit:-

“1. The Provincial Land Disputes Appeals Committee misapprehended the law in its finding that Susan Wangechi Hinga had any legal interest in land parcel No. Mwerua/ Gitaku/450 which the tribunal purported to award to the Respondent a portion of 2 acres.

2. The Provincial Land Disputes Appeals Committee erred in law by proceeding to determine a trust when they had no jurisdiction to do so.....”

On 8th June 2004, this court certified that the appeal as filed raised points of law as provided for under section 9 of the Land Disputes Tribunals Act. When the appeal eventually came up for hearing before **Kasango J** on 6th May 2008, parties agreed that the same be heard or argued by way of written submissions. Consequent upon that agreement, parties filed and exchanged written submissions. However **Kasango J** could not craft and deliver judgment as by then she had been transferred from this station to the High Court of Kenya at Meru. Parties subsequently elected to have the appeal heard by me but from where **Kasango J** had left. My role was clear cut therefor. I had to read the written submissions as well as the record and thereafter craft and deliver the judgment.

No doubt I have carefully read and considered record of appeal and the respective written submissions. The points of law raised in this appeal touch on jurisdiction. Did the land disputes tribunal at Baricho and the Provincial land disputes appeals committee, Central Province have jurisdiction to entertain the dispute which concerned ownership of and or title to land anchored on alleged trust? I do not think so. The appellant is the registered proprietor of the suit premises. Section 3(1) of the land disputes tribunals Act gives to the tribunals set up pursuant to the said Act jurisdiction to hear certain matters touching on land. That jurisdiction is limited to claims based on:-

- (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 very clear that issues of title to land are not among those that the tribunals are conferred with the jurisdiction. Accordingly for the two tribunals to have proceeded to hear a matter that turned on title to and ownership of land based on trust, the two tribunals clearly erred. More so when the suit premises were a first registration.

Both tribunals had no jurisdiction to entertain the issue of trust to the suit premises as section 3(1) of the land disputes Tribunals Act does not envisage that such tribunals will have such a mandate. Both tribunals therefore erred when they proceeded to act that way. Indeed they acted ultra vires the land disputes tribunals Act. The resultant awards were therefore nullities.

For the foregoing reasons, I would allow the appeal with no order as to costs as the parties involved are close family members. The awards made by Baricho land disputes tribunal and Provincial land disputes appeals committee, Central Province, dated 31st May 2002 and 23rd January 2003 respectively are hereby set aside.

Dated and delivered at Nyeri this 22nd day of October 2009

M. S. A. MAKHANDIA

JUDGE