



REPUBLIC OF KENYA

IN THE HIGH COURT

AT NYERI

Civil Appeal 90 of 2007

RUTH WANGECHI MWANGI APPELLANT

VERSUS

GEOFFREY MUCHIRI RESPONDENT

(Appeal from the award of the Central Province Land Disputes Appeal Committee Tribunal in appeal No. Maragw/18/2003 delivered on 25th July 2007)

J U D G M E N T

The dispute leading to this appeal commenced when the respondent filed a claim with Maragua Land Disputes tribunal claiming that the appellant was occupying his land parcel **Loc. 7/Gakoigo/1320** hereinafter referred to as “*the suit premises*” illegally and as a trespasser. Hence he sought for her eviction. The suit premises had been transmitted to him apparently through a succession cause and he had a title to the same.

In response, the appellant claimed that she had occupied the suit premises since 1966 having bought the same from one, **Muchira** at a consideration of Kshs.530/= which she duly paid. However before he passed on, the vendor secretly and without her knowledge or consent sold the same suit premises to the respondent’s father who proceeded to file a succession cause. When he entered the suit premises, the appellant sued him successfully for trespass. As far as the appellant was concerned the respondent’s father obtained the title deed to the suit premises without her knowledge and later passed it on to the respondent.

The tribunal having considered the dispute carefully ruled that “..... **land parcel No. Loc. 7/Gakoigo/1320 belongs to the defendant Ruth Wangechi Mwangi since she had bought the land from Muchiru’s husband before his death.....**”

In essence the tribunal held that the suit premises belonged to the appellant.

The respondent was dissatisfied with the above outcome. Accordingly and as required by the provisions of the land Disputes Tribunals Act he preferred an appeal to the Provincial Land Disputes appeals committee, Nyeri. The appeals committee deliberated on the issue and determined as follows: “**Having listened to both parties and having perused all the documents presented to us as pertains**

this (sic) case, all members of the Nyeri District appeals tribunal keep (sic) Maragwa District Tribunal aside and ruled (sic) that Loc. 7/Gakoigo/1327 reading Geoffrey Muchiri Mwangi remain as it is in the certificate and location and order. Ruth Wangechi Mwangi to vacate from the said parcel No. Locap (sic) 7/Gakoigo/1320.....” The meaning of this was that the appeals committee overturned the decision of the Maragwa land disputes Tribunal.

The appellant this time around was aggrieved by the decision of the appeals committee aforesaid and as required lodged the instant appeal in this court. The grounds of appeal filed through **Messrs C.K. Mwhia & Co. Advocates** were that:-

“1. The Appeals Tribunal erred in law in adjudicating in

matters affecting title to land without jurisdiction.

2. The Appeals Tribunal erred in law in entertaining matters that had been decided by a court of law there before and a decision delivered in Senior Resident Magistrate’s Court at Murang’a Civil Case No. 231 of 1979 between the same parties on the same subject matter.

3. The Appeals Tribunal erred in law in failing to note that both parties were claiming to be entitled to the land and hence the issue was beyond their jurisdiction. Maragwa Land Disputes Tribunal had awarded the appellant the land.

On 14th January 2009, **Kasango J** certified that the appeal as filed raised issues of law that ought to be determined by this court.

When the appeal came up for directions before me on the 13th July 2009 it was agreed that the same be canvassed by way of written submissions. Those written submissions were subsequently filed and exchanged which I have carefully read and considered

The decision of this appeal will turn on ground 2 of the memorandum of appeal. This ground is to the effect that both the Maragwa land Disputes tribunal as well as the appeals committee, Nyeri entertained a matter that was res judicata. There is no doubt at all that the respondent sued the appellant in the Senior Resident Magistrate’s court at Murang’a in civil case numbers 231 of 1979. In that case he sought the eviction of the appellant on the ground that the appellant had been in occupation of the suit premises given to the respondent by his father in 1975 following a succession cause in Kigumo court. The appellant had been ordered to vacate and she had refused. In fact she had proceeded to register a caution on the suit premises. The appellant countered the respondent’s claim aforesaid by stating that she went into possession of the suit premises in 1956 having bought it from one **Mburu Waithira**.

L. Wannipa – RM, in a judgment delivered on 24th May 1980 held:- **“As the defendant has adverse possession of more than 12 years the plaintiff cannot evict him. As the Plaintiff has failed to prove his case on a balance of probabilities this suit is dismissed with costs**” In essence the court held that the respondent could not evict the appellant from the suit premises as she had acquired adverse possession. This judgment has to date not been set aside, varied and or reviewed. Much as the correctness of the judgment is doubtful, the same has not been set aside on appeal. Thus it still remains a valid judgment of the court. Having not been set aside, it is therefore binding on the parties. Who were the parties therein?, the appellant and the respondent. What was the subject of litigation?, the same suit premises as herein. What did the respondent want? Eviction of the appellant. In the proceedings before both the Maragwa land disputes Tribunal and appeals committee, who were the litigants? The appellant and respondent. In nutshell, what the parties were litigating upon before the two tribunals was the same

subject matter they had litigated upon in SRMCCC No. 231 of 1979 at Murang'a. Clearly therefore the proceedings before the two tribunals in the light of the judgment in SRMCCC No. 231 of 1979 aforesaid were Res Judicata. Section 7 of the Civil Procedure Act forbids a court from trying a suit or issue which is res judicata. It is in these terms:-

“No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.”

There is no doubt at all that in the circumstances of this appeal the issues in dispute before the tribunals were directly in issue in the SRMCCC No. 231 of 1979 and that the parties therein were the same as in the suit in the SRM's Court.

Accordingly both tribunals had no jurisdiction to entertain matters already decided by a court of law with competent jurisdiction. Further more section 13(3) of the Land Disputes Tribunals expressly provide as follows:-

“For avoidance of doubt it is hereby provided that nothing in this act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court.” I need not say more.

For all the foregoing reasons, I allow this appeal and set aside both awards of the Maragwa Land Disputes tribunal as well as land disputes appeals committee, central province dated 28th March 2003 and 25th February 2007 respectively. The appellant shall have the costs of this appeal.

Dated and delivered at Nyeri this 30th day of November 2009

M. S. A. MAKHANDIA

JUDGE