

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal 68 of 2008

CHARLES WAKIBIA MUNYORORO

RUTH NYANDIA MUNYORORO.....APPELLANT

(Arising From Nyeri C.M's Civil Case No. 5 OF 2003)

Versus

MARY MUKUHI MUNYORORO.....RESPONDENT

JUDGMENT

This is an appeal against the decision of the provincial Land Disputes Appeals Committee, Central province read to the parties on 11th August 2008 vide Nyeri Nyeri's Tribunal Land Case No. 5 of 2003. In the Memorandum of Appeal dated 3rd September 2008, Charles Wakibia Munyororo and Ruth Nyandia Munyororo, the appellants herein, put forward the following grounds:

1. ***THAT the Appeals Committee had no jurisdiction to entertain the claim whose subject - matter being L.R. AGUTHI/GAKI/969 was non-existent, the second appellant having disposed it of according to her wishes during her life-time and hence overtaken by events.***
2. ***THAT the Appeals Committee had no jurisdiction to disturb and/or purport to give any award concerning the land which the second Appellant, as absolute proprietor of L.R AGUTHI/GAKI/969 and a holder of an indefeasible title thereof, had every legal blessing to deal as she deemed fit during her life-time and no one had the authority to impel, compel, urge, dictate, direct, and/or coerce her on how to deal with the same and/or in any particular manner.***
3. ***THAT the Committee greatly erred in law to in taking into account extraneous matters such as the purported inheritance and it even had no jurisdiction to deal with succession matters.***
4. ***THAT the committee erred in law in arriving at an award which had no basis in law and/or incapable of being effected.***

Mary Mukuhi Munyororo, the Respondent herein, strenuously opposed the appeal. When the appeal came up for directions this court gave directions to have the appeal determined by written submissions which the parties subsequently filed.

The history behind this appeal appear to be short and straightforward. Charles Wakibia Munyororo and Ruth Nyandia Munyororo, being the 1st and 2nd Appellants herein, are a brother and mother to Mary Mukuhi Munyororo, the Respondent herein. She filed a complaint before the Tetu Land Disputes Tribunal vide Tetu L.D.T.C. No. 13 of 2002 in which she prayed for the tribunal to order the parcel of land known as Aguthi/Gaki/969 to be sub-divided into four equal portions. She was to get one of the four portions. Mary Mukuhi Munyororo said she has lived on the land since her birth and has never gotten married hence she is qualified to inherit part of the aforesaid land which is registered in the name of her father, Munyororo Kihia, deceased. The panel of elders heard the dispute. The Respondent told the elders that she came to learn in the year 2002 that the appellants had subdivided the land into two portions in 1999. At the hearing before the Tetu Land Disputes Tribunal, it became clear that the parcel of land known as Aguthi/Gaki/969 was previously registered in the name of Munyororo Kihia, who died

in 1962. The deceased was married to two wives namely Ruth Nyandia (2nd appellant) and Miriam Muringi Munyororo. The land was subdivided into two equal portions. One portion went to the deceased's brother Muhindi Kihia and the other went to the deceased. The deceased's portion was registered in the joint names of Ruth and Miriam. That portion was again subdivided into two equal portions. One portion went to Ruth and the other given to Miriam. The portion which went to Ruth is known as Aguthi/Gaki/969. That land was subdivided into equal portions with one portion going to Charles Wakibia and the other to Peter Kariuki. Ruth Nyandia told the tribunal that she did not give a share to Mary Munyororo because she assaulted her in many occasions. Parcel No. Aguthi/Gaki/969 was subdivided giving rise to Aguthi/Gaki/1624 and Aguthi/Gaki/1625. The Tetu Land Disputes Tribunal formed the opinion that Ruth Nyandia being the administrator of the estate of Munyororo Kihia, deceased, should have given a portion of the land to Mary Munyororo as one of the beneficiaries. In the end the Tetu Land Disputes Tribunal made an order directing the subdivisions to be revoked with a direction that fresh subdivisions be done which showed the Respondent owning a portion of the deceased's land measuring 0.3 acres. The appellants were dissatisfied with the aforesaid decision, they then filed an appeal before the provincial Land Dispute's Appeals Committee, Central province. The Appeals Committee dismissed the appeal and proceeded to affirm the decision of the Tetu Land Disputes Tribunal in its decision of 11th August 2008. Being dissatisfied with the aforesaid decision, the appellants preferred this appeal.

Having set out in brief, the history behind this appeal, let me now consider the merits of the appeal. An appeal to this court from the Appeal's Committee can only be on points of law pursuant to the proviso to section 9 of Land Dispute's Tribunals Act. Legal points arose from the memorandum of appeal filed herein revolving the issue as to whether around the Land Disputes Tribunal and the Appeals Committee had no jurisdiction to hear and determine the dispute. I have carefully perused the recorded proceedings and the written submissions. It is obvious from the decision of the panel of elders that their decision will lead to the cancellation or interference of title to land. The tribunal does not have that jurisdiction to revoke or cancel title deeds. There is evidence also that the tribunal purported to distribute the estate of Munyororo Kihia. The tribunal is not authorised to hear and determine succession disputes. Further more, the land sought to be subdivided has already been subdivided and new titles issued. The rights accrued to the registered proprietors cannot be defeated via these proceedings.

In the end I am convinced the appeal should be allowed on the basis of the above reasons. Consequently this appeal is allowed with the consequential orders that the decision of the Provincial Land Disputes Appeals Committee, Central Province of 11th August 2008 is set aside and substituted with an order setting aside the decision of the Tetu Land Disputes Tribunal and substituting it with an order dismissing the Respondent's complaint. I will direct that each party meets his or her own costs in view of the fact that the disputes involves family members.

Dated and delivered this 13th day of November 2009.

J.K. SERGON

JUDGE

In the open court in the presence of the Appellant in person and in the absence of learned counsel and in the presence of the Respondent.

J.K. SERGON

JUDGE