



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Misc. Civ. Appli. 108 of 2006

NJUE NGAI ALIAS MUNYI KAGUACHI.....APPLICANT

VERSUS

REGINA WAMBETI NJEU.....1ST RESPONDENT

EASTERN PROVINCE LAND APPEAL COMMITTEE.....2ND RESPONDENT

JUDGMENT

Notice of Motion dated 20/12/2006 seeks orders of Certiorari for the purpose of quashing the decision of Eastern Provincial Land Dispute Appeals Committee made on 25th May, 2006. The motion is supported by statement and verifying affidavit. The exhibits marked NN 182 show that the Exparte Applicant Njue Ngai is the registered proprietor of parcel of land Ngandori/ Kirigi/1336 and he holds a Land Certificate dated 17/2/1969 Exhibit NN3 is copies of Land Arbitration Case No. 8 of 2004 between Regina Wambeti Njeru and Munyi Kaguachi alias Njue Ngai. However the proceedings on Tribunal Case No. 8 of 2004 shows that the land in dispute was family and registered in the name of Appellant. And the Provincial Land Dispute Appeals Tribunal in Appeal case No. 85 of 2005 decided that the land which was meant for the family be subdivided into two equal portions. One to be registered in the name of Regina Wambeti jointly with her children Njiru Ngai and Rwamba Ngai and the other half to remain registered in the name of Appellant Njue Ngai.

The appellant argues that the decision of the Tribunal ought to be quashed because it is in excess of the powers granted under Land Disputes Tribunal Act 18 of 1990. That act defines land as “agricultural land as defined under Section 2 of Land Control Act, whether or not registered under the Registered Land Act Cap 300.

Therefore the Tribunal has jurisdiction over all agricultural land in the country. The powers granted by the Act as stated under Section 3 (1) thereof are “all cases of a Civil nature involving a dispute as to:-

- (a) the division of, or determination of boundaries to land, including land held in common.
- (b) A claim to occupy or work land
- (c) Or trespass to land.

The evidence before tribunal was that the land was clan land and was allocated to the mother of the

Appellant. The mother chose her second son, the appellant to be registered as proprietor in 1961 and that both mother and Appellant and other members of family have been residing on the land. It is therefore clear that the land is registered in the name of the appellant on his own behalf and on behalf of his mother and other members of his family.

The Land Disputes Tribunal are established by special Act 18 of 1990 to deal with land disputes for each Registration District and are manned by elders as provided Section 3 (7) provides for the law to be applied namely “the Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognized customary law”

In this case it is Kikuyu Customary Law for one member of the family to hold land in trust for other members of the family. Evidence is clear that before the land was registered in the name of Appellant was clan land allocated for the family. The family no longer can live in harmony and there are disputes. I find that it is necessary to find a way of sorting out that dispute disturbing the rights of a registered proprietor.

However as it is the Tribunals have no power to interfere with the ownership of the land as this would be contrary to provisions of Registered Land Act which guarantees rights of a registered proprietor.

On this ground alone I find the tribunal had no jurisdiction to order subdivision and registration of the subdivision in the names of the Respondents. The application is therefore allowed orders granted as prayed.

No orders as to costs.

Dated this 21st April, 2008.

J. N. KHAMINWA

JUDGE

21/4/2008

Khaminwa – Judge

Njue – Clerk

Regina Wambeti – present

Njue – Present

Read in open court.

J. N. KHAMINWA

JUDGE