



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Civil Case 47 of 2006

NDUBI KANAMPIU.....
.....1ST PLAINTIFF

JOHN MUTHONI M'NDUBI.....
.....2ND PLAINTIFF

VERSUS

M'KARIA KANAMPIU.....1ST
DEFENDANT

THE CHAIRMAN MERU SOUTH DISTRICT LAND DISPUTE TRIBUNAL....2ND
DEFENDANT

JUDGMENT

The plaintiff seeks orders to declare that the Tribunals proceedings and award in Land Dispute regarding Meru South MW1/12/2001 is unlawful and incapable of being enforced in law. The plaintiff also prays for costs.

The dispute disclosed under the pleading is that the tribunal proceeded to entertain proceedings which were already Res judicata having been determined by a court of competent jurisdiction namely High Court at Meru in Suit No. 171 of 1992 And that the Tribunal had no jurisdiction to entertain a suit regarding ownership of registered land. The defence of first Defendant was that the matter should have been brought by way of an Appeal or a Judicial Review Application and that the award was read by the Magistrate court in open court in Chuka Magistrate Court and no appeal was ever lodged in respect of the same.

First point to be noted is that under Order 11 rule 7 Civil Procedure Code “:No suit shall be open to objection on the ground that a merely declaratory Judgment or order is sought thereby, and the court may make a binding declaration of right whether any consequential relief is or could be claimed or not” Therefore since this suit claims a declaration and costs it is in order and properly before court.

The parties are members of the same family. First Defendant and first plaintiff are brothers. The first plaintiff is a grandfather of the second plaintiff. The land in dispute is Mwimbi/Kiraro/146 which is registered in the name of John M’Ndubi. There is also plot No. 661 registered in the name of Dickson Kaberia Kaaria as proprietor. He is the son of first Defendant. This was as ordered when the grant was confirmed on 11/4/1994 in succession No. Meru High Court No. 171/1992. Then the first Defendant filed a Tribunal case Mwimbi/12/01. He was claiming plot No. 146 from the second plaintiff. The

proceedings are exhibited as Exh.No. 3 which is Tribunal case No. Mwi/12/2001 regarding parcel No. Mwimbi/Kiraro/1030.

Ruling of Tribunal was made and certified. The outcome of which was that John Muthomi Ndubi second defendant herein should not have inherited the land parcel No. Mwimbi/Kiraro/146 being a grandson of deceased while his two fathers sons of Kanampiu deceased were alive. The Tribunal also ordered the second defendant to give the title deed to Kaaria Kanampiu and the two brothers namely Kaaria Kanampiu and Ndubi Kanampiu who were to share the land equally. The court has noted that there was Succession case No.171 of 1992 at High Court in Meru in the estate of Kanampiu Mpungi deceased. The administrator was M'Ndubi Kanampiu who was granted letters of administration on 8/9/1993 and which grant was confirmed on 8/4/1994 and confirmed grant was issued on 11/4/1994. The assets of the deceased being parcel No. Mwimbi/Kiraro/661 was inherited by Dickson Kaburia Kaaria and parcel No. Mwimbi/Kiraro/146 was inherited by the 2nd plaintiff John Muthomi M'Ndubi. Evidence shows that the second plaintiff was registered as proprietor on 13/6/1994.

Thereafter some proceedings were taken in Mwimbi Land Disputes Tribunal in which the first defendant was plaintiff and the plaintiffs were the defendant in the year 2001.

It is to be stated that the Land Disputes Tribunal Act 18/1990 was enacted to grant certain jurisdiction to tribunals to deal with certain land matters and the jurisdiction of the tribunal is limited to the matters set out under section 3 (1) of that Act mainly to deal with issues of :-

1. trespass to land
2. claim to occupy or work land.
- 3 the division of, or determination of boundaries of the land, including land held in common.

The tribunal has no authority or jurisdiction to deal with issues outside the powers limited as above.

In the circumstances the proceedings under Land Disputes Tribunal No. Mwimbi/12/2001 were null and void for that reason. Furthermore the tribunal was dealing with issues of Succession of the estate of a deceased person. This tribunal had no jurisdiction to do so since the inheritance of the estate of deceased was decided upon and grant confirmed in Succession Case No. 171 of 1992. Section 13 (3) the law clearly prohibits the Tribunal to entertain proceedings in respect of which the time for bringing proceedings is barred under any law relating to the limitations of actions or to any proceedings which have been heard and determined by any court.

It is my finding that the proceedings in the Tribunal Case No MW1/12/2001 are null and void as the tribunal had no jurisdiction to hear and determine such a dispute which was already decided by a court of law in Succession No. 171 f 1992 in Meru High Court.

I therefore enter Judgment for the Plaintiff against the Defendant and grant orders as prayed in the plaintiff. No order is made as to costs since the parties are members of the same family.

Dated this 9th April, 2008.

J. N. KHAMINWA

JUDGE

9/4/2008

Khaminwa – Judge

Njue – Clerk

First Defendant present

Read in open court.

J.N KHAMINWA

JUDGE