



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 127 of 1999

JOHN NDERITU NGATIA APPELLANT

Versus

SOSPETER MWANGI WAMBUGU.....1ST RESPONDENT

MOSES KININI KANYORA 2ND RESPONDENT

*(Being an appeal from the award and order of the Provincial Land Disputes Appeals Tribunal at Nyeri
in Tribunal Appeal No. 22 of 1997)*

JUDGMENT

The respondents referred their claim over Parcel No. NYADARUA/SIMBARA/7 to Nyandarua District Land Disputes Tribunal. That parcel of land is registered in the name of original appellant who is now deceased. The respondent claim before the tribunal was that they contributed to the purchase price of that parcel of land and therefore claimed that the original appellant held that property in trust for them. The tribunal by its award dated 17th November, 1998 rejected the respondents claim. The respondents filed an appeal to the Provincial Land Disputes Appeals Committee. Coincidentally that appeal was given the same file number as the matter before the District Land Disputes Tribunal. That fact led the appellant to argue that it was proof that the Appeals Committee did not keep a register of the appeals as required by **section 8(2)** of the Land Disputes Tribunal Act. That section provides that an appeal on being filed shall be registered in a register of appeals. My response on that argument is that the fact that the appeal bears the same number as the matter heard before the District Land Dispute Tribunal is not conclusive evidence that the Appeals Committee does not keep a register. Even if the Appeals Committee did not keep a register for the appeals that fact would not invalidate an appeal filed before them. In that respect ground 4 of appeal fails. The respondents' appeal to the Appeal Committee is dated 24th December 1998. The same was filed out of the time period provided in section 8(1) of the Land Disputes Tribunal Act. The same should have been filed on or before 18th December 1998. On that basis alone I do accept the appellant's arguments the appeal filed by the respondents before the Appeals Committee was defeated by that delay and consequently the decision reached by the Appeals Committee was a nullity. The appeals committee on hearing the appeal gave its award in favour of the respondent. In that award it was ordered that the respondents each one of them and the original appellant would get 12

acres of the property. It is that award which aggrieved the appellant. The appellant filed the following grounds of appeal:-

- 1. The Tribunal erred in law by making decisions of an issue of ownership of registered land which they did not have jurisdiction to so determine.**
- 2. The Tribunal erred in law in canvassing an issue of trust and finally seeking that such trust should be determined while it had no jurisdiction to make such findings.**
- 3. The Appeal Tribunal erred in law in entertaining cause of action based on trust in respect of which the time for bring such proceedings is barred under the Limitation of Actions Act centrally to express provisions of the Land disputes Tribunal Act.**
- 4. The Land Dispute Appeal Tribunal erred in law in entertaining an appeal without any having been filed in accordance with the law or at all.**

Ground 4 has already been dealt with in this judgment. The appellant in support of the other grounds argued that the appeals committee acted beyond their jurisdiction as denoted by section 3(1) of the Land Disputes Tribunals Act. That section provides as follows:-

3. (1) Subject to this Act, all cases of civil nature involving a dispute as to-

(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, shall be heard and determined by tribunal established under section 4.

Grounds 1 and 2 of appeal can be considered together. The appellant was correct in his submissions that the appeals committee exceeded their jurisdiction as provided under section 3(1). I accept the argument that the appeals committee neither had power to adjust ownership of the property nor the power to declare an alleged trust. In making that finding I am well persuaded by the following cases:

1. HANNAH WANJIKU KARUA vs SAMWEL KINGO KARUGAI HCCC NO. 184 OF 2002 NAKURU. In this case honourable justice Daniel Musinga had the following to say.

“in the present case the tribunal acted without jurisdiction by purporting to determine a dispute that related to breach of sale of land which is outside the ambits of section 3(1) of the land dispute tribunal act.”

2. HC MISC CIVIL APPLICATION NO. 689 OF 2001 NRB KAJIADO LANDS DISPUTES TRIBUNAL & ANOTHER VS FRANCIS NDUNGU KANGETHER & OTHERS. In this case honourable justice J. G. Nyamu said as follows:-

“The court has no hesitation in stating that under section 3 of the Land Disputes Tribunal act the Kajiado Land Dispute Tribunal had no jurisdiction to adjudicate on ownership of registered land. The award is ultra vires of the Act”.

From the proceedings it is not clear when the alleged trust was created. For that reason it was not possible to determine when time began to run in respect of that claim. Ground 3 of the appeal therefore fails. The appeals committee in this appeal in issuing the award acted ultra vires to the act. They neither had power to entertain a claim on ownership of land or trust. The appeal therefore succeeds. The court does hereby set aside the award of the Provincial Land Disputes Appeals Tribunal at Nyeri No. 22 of 1997 issued on 14th October 1999. The appellant is awarded costs of this appeal.

DATED AND DELIVERED THIS 12TH DAY OF JUNE 2008.

MARY KASANGO

JUDGE