



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 160 of 2001

PAUL WAHOME MATU APPELLANT

VERSUS

JOHN KIHORO MATU

RESPONDENT

(Being an appeal on points of law against the decision of the Provincial Land Disputes Appeal Committee delivered on 11th October 2001 in P.L.D.A.C. No. 168 of 2000)

JUDGMENT

The Appellant herein filed an action before the land dispute tribunal which resulted in the ruling delivered on 9th November 2000. In evidence adduced by the Appellant before the said tribunal it becomes clear that the Appellants claim was one in trust. In order to appreciate that it is necessary to copy out the appellant's evidence in chief. It is as follows:

“The defendant is my elder brother. I am the third born from him. We are all six children of Matu the first born is Njeri Gitonga married Kihoro Matu, Muringi Ndirangu, Gicheru Matu, Wahome Matu, Wangechi Ndiritu, married both my parents are dead. My father was having ten wives two are alive. I have sued this land since this land was the one which was allocated to my mother being she share of her household. During the consolidation in 1958 I assisted my father to consolidate these portions of land that belonged to my mother, since my elder brothers Kihoro was in detention. My father had another land in Aguthi but we sold together with him, for Kshs.4000/-. My father gave me 1.300 for me to marry, but instead I bought 1 acre which was included alongside this land in dispute since it was of my mother. The purpose was to increase the acreage to enable it be enough for me and my other brothers. This land in dispute is of six acres during the demarcation this land was registered in the name of Kihoro Matu since he was the eldest. My father had other 10 wives in total and he gave each wife her own portion. In this land in dispute, I myself do also cultivate, also Gicheru the defendant also cultivate the same land. My house is not in this land. Also the defendant has his house in another piece of land elsewhere. It is only Gicheru who has built in this land. My claim is that I want to have my share from this land that belonged to my mother. This land should be sub-divided into three portions each for the three brothers.”

As can be seen from that evidence the appellant was inviting the tribunal to entertain the matter by declaring a trust. Gladly, the tribunal did not agree to declare a trust. In its ruling the tribunal held:

“This tribunal court did visit the suit land and also heard from both the defendant witnesses as well as

from the complainant. Therefore, this court has ruled that Paul Wahome has no right over this disputed land, and from 1st January 2001 the defendant Kihoro Matu should allow the complaint to remove/harvest any crop that belongs to him. Paul to pay costs of the defendant. This land to be sub divided between Kihoro Matu and Moses Gicheru Matu.”

The appellant was dissatisfied with that decision and preferred an appeal before the Provincial Land Disputes Appeals Committee Central Province. The ruling of that appeals board was to the effect that Kihoro Matu was the sole proprietor of parcel No. 629 Thegenge/Unjiru/Nyeri District. The appellant was once again dissatisfied with that decision. He, therefore, has preferred this appeal. He has brought before court the following grounds of appeal:-

- 1. The dispute between the parties was claim based on trust which both the land disputes tribunal and the Provincial land Disputes Committee have no jurisdiction to entertain, thus they were ultra vires.*
- 2. Natural justice dictates that justice must not only be done but must be seen to be done. In this case one of the members of the Tribunal was called to testify for one of the parties before the same Tribunal. His influence was actually felt and caused a miscarriage of justice.*
- 3. Whereas it is common knowledge that in matters of land involving relatives documentary evidence is in most cases not available, the Tribunal decided this case against the appellant simply because he did not support it with documentary evidence*
- 4. The land disputes tribunal and the provincial land disputes appeals committee dealt on various extraneous matter that blinded their vision as to the real issues at stake.*
- 5. The provincial appeals committee did not give reasons why they had to concur with the land disputes tribunal.*

The 1st ground the appellant invites this court to find that the tribunal had no jurisdiction to entertain a matter relating to trust. That indeed is the law. Section 3 (1) of the Land Dispute Tribunal Act provides as follows:

- (1) Subject to this Act. all cases of a 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 a Tribunal established under section 4.”

That Section clearly provides the limits within which a tribunal should determine the matters before it. There are Various decided cases whose jurisprudence clearly shows that the tribunal if it acted beyond that jurisdiction its decisions would be annulity. I have considered the decision of the appeals committee dated 11th October 2001. There is nothing in that decision which shows that it acted beyond the limits of its jurisdiction. Accordingly, ground 1 of the appellant fails. Ground 2 to ground 5 invites this court to determine that the tribunal was wrong to have failed to act upon the appellant’s claim. The appellants claim as seen in the quote above shows that the appellant was seeking a declaration of trust. The tribunal could not make such declaration for if it did, that would be in excess of jurisdiction donated by Section 3 (1) above. That being the case this courts judgment is that the appeal fails and same is dismissed with costs to the respondent.

Dated and delivered at Nyeri this 16th day of October 2008.

MARY KASANGO

JUDGE