REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 120 of 2002

DUNCAN MWARIRI MWAURA & ANOR …..…… APPELLANTS

VERSUS

FRIDGE NJOKI MWAURA & ANOR …… RESPONDENT

(Appeal from the Provincial Land Disputes Appeals Committee Central Province delivered

on 16th May 2002).

J U D G M E N T

Fridge N. Mwaura and Chege Mwaur**a**, hereinafter referred to as "*the respondents"* sued **D**uncan Mwariri Mwaura and John Mwaura Mwariri hereinafter referred to as "*the appellants"* in Maragua Land Disputes Tribunal seeking that the appellants had trespassed on their parcel of land. Having carefully listened to the evidence tendered by the appellants as well as the respondents the Maragua Land Disputes Tribunal made the following award;

"(a) The Principal Magistrate Murang'a to revoke the Defendant No. 2's title issued to him and restitute the disputed land to the Plaintiffs jointly for their lifetime.

(b) Out of the disputed land comprising 2 acres we recommend the restitution of 1.9 acres to the plaintiffs 1 & 2 and 0.1 acre to be awarded to the defendantNo. 2 on humanitarian grounds to cover his house only instead of demolishing it from the disputed land.

(c) Defendant No. 2 to forthwith be ordered to cease plucking the Plaintiff No. 1's tea plants numbering 1500 and remove the barbed wire fence he closed the Plaintiff 1's gave (sic) with.

(d) Plaintiff No. 2 to refund Kshs.2000/= to the Defendant No. 1 which he gave to the Plaintiff No. 1 to give it to his late husband as "*Rwiga"*.

(e) The defendant No. 1 to give or share to his son the defendant No. 2 land for cultivation within his own land parcel No. Loc. 2/Kangari/555 measuring 2.434 hectares.

The appellants were aggrieved by the aforesaid award. Thus they preferred an appeal to the Provincial Land Disputes Appeals Committee at Nyeri. The Provincial Land Disputes Appeals Committee having deliberated on the appeal made an award in these terms:-

"Appellant John Mwaura Mwariri must cease to pluck Fridge Njoki Mwaura's tea. Duncan Mwariri Mwaura should share his land Loc. 2/Kangare/555 with his son John Mwaura because he has no interest on parcel No. 1051 at all. Occupation must cease. That the executive officer Murang'a Principal Magistrate's Court and Murang'a Land Registrar do sign all necessary forms and transfer land parcel Loc. 2/Kangare/1051 measuring 0.81 hectares in the (sic) or John Mwaura Mwariri ID/7437573 to Chege Mwaura ID/2040509 and Fridge Njoki Mwaura ID/2041483. That John Mwaura Mwariri do refund all payments received from the sale of Fridge Njoki tea picked from parcel Loc. 2/Kangare/1051. That the appellants Duncan Mwariri Mwaura and John Mwaura Mwariri do pay costs.

The appellants were still aggrieved by the turn of events. Pursuant to the provisions of *section 8(9)* of the Land Disputes Tribunals Act, the appellants lodged the instant appeal to this court. Through Messrs C.K. Mwihia & Co. Advocates, the appellants have impugned the Provincial Land Disputes Appeals Committee's award on the following four grounds:-

1. The appeals tribunal erred in law in adjudicating on matters affecting title to land without jurisdiction to do so.

2. The tribunal erred in law in failing to note that the land was transferred by the original owner to the 1st appellant legally and though land (sic) channels after payment of price of Kshs.2000/=

3. The tribunal erred in law in failing to note that the 1st appellant transferred the land to his son the 2nd appellant legally **a**nd after following the laid down procedure and channels.

4. The tribunal erred in law in failing to note that no trust existed between the 1st appellant and the Respondent.

5. The tribunal erred in law in assuming that the transaction between the appellants were fraudulent and done in secret without proof whatsoever.

The said grounds had been certified by Okwengu J. on 7th October 2003 as raising issues of law as required.

The appeal was then set down for hearing before me on 31st July, 2008. On that day, both Mr. Macharia and Mr. Kirubi, learned counsel appeared for the appellants and respondents respectively. They agreed to have the appeal argued by way of written submissions. The court was not averse to the idea. Accordingly, the court made an order to that effect. Subsequent thereto however only the appellants filed their written submissions in support of the appeal which I have carefully read and considered together with the authorities cited. For unexplained reasons however, the respondents opted not to file their written submissions as previously agreed. I would imagine that their position may have been informed by the hopelessness of their case. Their case as will become apparent later was cooked and beyond redemption.

I will in the circumstances of this case be guided by the pleadings, the written submissions of the appellants and the law. It is the contention of the appellants that in making the impugned award, the Provincial Land Disputes Appeals Committee exceeded its powers. The powers of such tribunals set up under the Land Disputes Tribunals Act are defined and limited by *section 3* thereof to:-

(a) the division of, or determination of boundaries to land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land.

From the pleadings and the award, the two tribunals ordered the transfer of 0.81 hectares of land parcel Loc. 2/Kangare/1051 from the 2nd appellant to the respondents herein. That action by the tribunals is in

clear contravention of the mandate of the tribunals established under the said Act. Such tribunals have no powers or jurisdiction to order for subdivision of a parcel of land such as Loc. 2/Kangare/1051 already registered in the name of the 2nd appellant. By so ordering the tribunals exceeded their jurisdiction by a very wide margin. It is also instructive that the Provincial Lands Disputes Appeals Committee directed the Principal Magistrate's Court at Murang'a to effect subdivision of the suit premises. In so ordering the tribunal was entertaining or indeed interfering with the appellants' title to land: It has no such powers to deal with matters of title to land. The net effect of the award was to revoke the title to the suit premises owned by the appellants. It had no powers to interfere with the interest of a registered proprietor whose title is protected by sections 27 and 28 of the Registered Land Act. In doing so the tribunal was exercising pretended powers.

From all the foregoing it is apparent that in making the award the Provincial Land Disputes Appeals Committee acted ultra vires its powers as envisaged by the statute creating it. The award made has nothing to do with boundaries, claim to work or occupy land or trespass.

The land disputes tribunals being creatures of statute must know that they can only do what the statute creating them empowers them to do. They cannot go beyond those powers. They cannot clothe themselves with powers which they do not have. They cannot assume jurisdiction which has been specifically ousted. In the circumstances of this case, the provincial land disputes appeals committee in making the award has done all the forgoing. Those acts must be frowned upon. In this regard I am in total agreement with the sentiments expressed by Maraga J. in the case of Republic V Msambweni Land Disputes Tribunal and others ex-parte sogno when he said;

"……..I do not know if anyone has taken the trouble to advise the Land Disputes Tribunals on the extent of their jurisdiction. I say this because of the numerous applications that come before us from their decisions. Those tribunals seem to think that they have all the powers in the world to deal with anything and everything that is taken to them….. The Land Disputes Tribunal should know that being creatures of statute they can only do what the statue authorizes them to do…..The have no powers to deal with matters of title to land.

They had no powers to revoke any title and have one issued to somebody else as they purported to do in this case……."

I also agree with Mutungi J when he says in the case of Ngugi Gikuma v/s Beth Nduta, HCCA No. 105 of 2003 (unreported) that "….. the jurisdiction of the land Disputes Tribunals, both at the District and Provincial level are limited to the matters provided for in section 3 (1) of the Act. And those matters do not include title or ownership of land.

These sentiments vividly captures what the Provincial Land Disputes Appeals Committee did in the circumstances of this case. I need not say more.

For these reasons, I would allow the appeal and set aside the award of the Provincial Land Disputes Appeals

Committee dated 8th May, 2002. This being a family dispute, I make no order as to costs of this appeal.

Dated and delivered at Nyeri this 20th day of November, 2008.

M.S.A. MAKHANDIA

JUDGE