



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 44 of 2005

BEATRICE NJERI MBUTHIA.....APPELLANT

Versus

FRANCIS MAINA NJOROGE.....RESPONDENT

(Being an appeal from an order and decree on entry of judgment of an award of Kieni West Land Dispute Tribunal Award No. 27 of 2004 in Nyeri Chief Magistrate's award case No. 8 of 2005, Osoro S.R.M.)

JUDGMENT

The Respondent in this appeal entered into an agreement with the Appellant whereby the Appellant agreed to sell her property NYERI/MWEIGA/296. The Appellant agreed to sell 1½ acres to the Respondent at the cost of 70,000/=. The Respondent paid to the Appellant Ksh.50,000/=. The Respondent alleged before the Land Dispute Tribunal, to which this matter was referred, that the Appellant changed her mind in respect of selling her property to him and this change of mind he attributed to the higher prevailing price of property. The Appellant at first refused to proceed with the transaction but later agreed to sell to the Respondent only one acre for the price previously agreed. It transpired that the Appellant later refused to sell to the Respondent even that one acre land. This matter was referred to the Land Dispute Tribunal and by their award delivered on 7th February 2005 they found as follows:

“AWARD

That: Beatrice Njeri Mbuthia excise one acre and have it transferred to the buyer Francis Maina Njoroge while as Francis Maina clears his balance of Ksh.20,000/= as per their agreement.

That: The court to sign all the relevant documents concerning the above case.”

The Respondent by a Chamber Summons dated 23rd March 2005 sought and obtained from the lower court judgment as per that award. The Court also ordered that documents in respect of that sub division be executed by the Executive Officer of the Court. The Appellant being aggrieved by that entry of judgment has filed the following grounds:

“1. The Learned Magistrate erred in law and in fact in entering judgment for the Applicant when the award was a nullity under the relevant provisions of the law.

2. *The Learned Magistrate erred in failing to ascertain the legality of the award before ordering the same to be made a judgment of the court.*
3. *The Learned Magistrate erred in allowing the applicants application when the same was incompetent and an abuse of the process of court.*
4. *The Learned Magistrate erred in failing to take into consideration all the relevant factors needed to be taken into account before entering the award as a judgment of court/alternatively took into consideration irrelevant factors thereby arriving at the wrong conclusion.”*

Section 3(1) of the Land Dispute Tribunal Act 1990, provides the jurisdiction given to the tribunals. That section provides as follows:

“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.”***

When one closely looks at the provisions of that section it becomes very clear that that jurisdiction does not cover hearing of matters relating to breach of contract. In this case the Tribunal by its award granted orders for specific performance. That indeed is out of the jurisdiction of the Tribunal and on that basis alone the Appellant’s appeal does succeed.

Accordingly the judgment of this court is that the judgment of the lower court delivered on 14th July 2005 is hereby set aside. The Court will not grant costs to the Appellant because throughout the hearing before the Tribunal the Appellant, although was summoned to attend the hearing, she failed to do so. The matter therefore proceeded by way of formal proof.

Dated and delivered at Nyeri this 27th day of July 2007.

MARY KASANGO

JUDGE