



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
CIVIL APPEAL 82 OF 2001

KIMANI MURAMBA.....APPELLANT

VERSUS

WAMBUI GIKWA.....RESPONDENT

JUDGMENT

This appeal relates to a long and protracted land dispute. A case was lodged by the respondent **Wambui Gikwa** against the appellant **Kimani Muramba** before the Kajiado Land Dispute Tribunal. The case was in respect of parcel **No. Ngong/Ngong/6138** (*hereinafter referred to as the suit land*) measuring 0.91 hectares. After hearing the dispute, the said Land Disputes Tribunal noted that the former registered owner of the suit land, one Samuel Seno (*deceased*) had sold the suit land to the respondent – Wambui Gikwa. The family of Samuel Seno later transferred the suit land to the respondent, who was issued with a title deed of the said parcel of land on the 2nd August, 1993.

The tribunal observed that unbeknown to the family of the said Samuel Seno (*deceased*), one of his widows called Miriam Wanjiku sold the suit after the death of the said Samuel Seno to the appellant. The appellant took possession of the suit land and erected therein permanent structures. The tribunal noted that the respondent had made efforts to take possession of the suit land from the appellant but her efforts were always thwarted. The tribunal noted that the wife and the daughter of the appellant were buried on the suit. In view of the foregoing, the tribunal was of the opinion that it would occasion hardship if the appellant and the members of his family were evicted from the suit land.

The tribunal noted that although the respondent was the registered owner of the suit land, in their verdict, which they considered to be fair, was for the suit land to be sub-divided into two portions and the part where the appellant had constructed a house and buried the members of his family to be registered in the name of the appellant. The tribunal ordered the respondent to sign the transfer forms to give effect to its verdict or in default thereof, the executive or the registrar of the court was to execute the said transfer forms on behalf of the respondent. The decision of the Kajiado Land Disputes Tribunal was delivered on the 19th December, 2000.

The respondent was dissatisfied with the decision of the Kajiado Land Disputes Tribunal and duly filed an appeal to the Rift Valley Provincial Land Disputes Appeal Tribunal. The said appeal was heard

on the 22nd March and the 4th April, 2001 at the Provincial Commissioner's boardroom at Nakuru. The proceedings of the said Provincial appeals tribunal disclosed a shocking irregularity. Instead of hearing the appeal by considering the submissions made by the parties to the appeal, the said Provincial Appeals Tribunal took oral evidence from the parties to the appeal together with their witnesses. The said Provincial Appeals Tribunal instead of hearing the appeal, heard the dispute afresh. I shall revert back to the manner in which the proceedings were conducted at a later part of this judgment.

In its verdict, the tribunal took cognisance of the fact that by the time the said appeal was being canvassed before it, the appellant Kimani Muramba had died and had later been substituted in the proceedings by his widow, who also died and finally by his brother-in-law, one **David Njau**. The Provincial Appeals Tribunal noted that the respondent was the first purchaser of the suit land and was subsequently issued a title deed for the same. A member of the family of Samuel Seno (*deceased*) had followed the wrong channels and sold the same parcel of land to the appellant, Kimani Murambi. The Provincial Appeals Tribunal recognised the title deed issued to the respondent which in its opinion was acquired legally. The tribunal in the circumstances ordered the family of Kimani Muramba to vacate the said parcel of land and hand over possession to the respondent. The Provincial Tribunal set aside the decision of the Kajiado District Land Disputes Tribunal. The decision of the Provincial Appeals Tribunal is what provoked this appeal.

It has memorandum of appeal, which was stated to have been filed by "**Kimaru Murabe,**" the appeal raised four grounds of appeal challenging the award of the Provincial Appeals Tribunal. The summary of the said grounds of appeal are: that the appellant was aggrieved that the Provincial Appeals Tribunal had determined the appeal yet there was no competent appeal before it; that the appeal did not comply with the relevant provisions of the **Land Disputes Tribunal Act, 1990**; that the Appeals Tribunal Committee usurped the jurisdiction of the Kajiado District Land Dispute Tribunal by re-hearing the parties; and finally that the tribunal had erred in law in not giving a reasoned award or decision.

At the commencement of the hearing of the appeal, Mr. Kurgat for the appellant and Mr. Kahiga for the respondent agreed by consent to have the issues raised by the appellant certified as raising points of law for determination by the court. Mr. Kurgat for the appellant then submitted that the Provincial Appeals Tribunal had acted in excess of his jurisdiction when it purported to hear an appeal which had been filed beyond the requisite period of thirty (30) days. He took issue with the manner in which the tribunal heard the appeal. It was Mr. Kurgat's submission that instead of hearing the appeal, the Provincial Appeals Tribunal embarked on a retrial of the case by hearing witnesses who had testified before the Kajiado Land Disputes Tribunal. He submitted that the Provincial Appeals Tribunal had no jurisdiction to rehear an appeal which had been filed before it. He submitted that the Provincial Appeals Tribunal had failed to consider the fact that the appellant had been in occupation of the suit land for eighteen (18) years at the time the appeal was being heard. He urged the court to allow the appeal and set aside the decision of the Provincial Appeals Tribunal.

Mr. Kahiga for the respondent opposed the appeal. He submitted the Provincial Appeals Tribunal was competently constituted when it heard the appeal. He submitted that the appeal before the tribunal was similarly competently filed. He argued that the appellant had not demonstrated which section of the **Land Dispute Tribunal Act** had been breached by the said Provincial Appeals Tribunal when it heard the case. It was Mr. Kahiga's argument that the **Land Disputes Tribunal Act** did not specify the manner in which an appeal could be heard by the Provincial Appeals Tribunal. In his view, the Provincial Appeals Tribunal could determine the appeal by re-hearing the witnesses who testified before the Kajiado District Land Disputes Tribunal.

Mr. Kahiga submitted that taking into consideration the fact that the appellant participated in the proceedings, the appellant was not prejudiced by the manner in which the said proceedings were conducted. He maintained that the tribunal had given reasons for the decision which could not be impeached by this court. Mr. Kahiga further submitted that the Provincial Appeals Tribunal had jurisdiction to hear a dispute involving the right of occupation and trespass. He argued that although the suit land was registered, the tribunal had jurisdiction to hear the matter as the issue to be determined was not title to land but trespass. He submitted that the Land Dispute Tribunal had jurisdiction to determine

disputes in respect of registered land in so far it did not go beyond its jurisdiction as confirmed by **Section 3** of the **Land Disputes Tribunal Act**. He urged the court to disallow the appeal.

Several issues have emerged for determination by this court. This court is conscious of the restricted nature of its mandate in considering the said issues raised since this court can only hear appeals on points of law only this being a second appeal. The first issue for determination is whether the Kajiado Land Disputes Tribunal had jurisdiction to hear and determine a matter in respect of a registered parcel of land. It is not in dispute that the suit parcel of land is registered under the **Registered Land Act (Cap. 300 Laws of Kenya)**. The respondent was issued with the title of the said parcel of land registered as **NGONG/NGONG/6138** on the 2nd September, 1993. Mr. Kahiga submitted that the tribunal had jurisdiction to hear and determine a matter relating to registered land provided that the tribunal does not exceed its jurisdiction as provided by **Section 3(1)** of the **Land Disputes Tribunal Act**. What does the said section provide?

Section 3(1) states that:

“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 and 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”.*

Land is defined by **Section 2** of the said **Act** to *“mean agricultural land as defined by Section 2 of the Land Control Act, whether or not registered under the Registered Land Act...”*

In the present case, it is obvious that the appellant was seeking a declaration as to title from the Kajiado Land Disputes Tribunal hence its decision to order the sub-division of the suit land. It is evident that the said Kajiado Land Disputes Tribunal did not have jurisdiction to hear and determine the dispute before it. The determination as to title of land is not one of those areas where a tribunal has jurisdiction as provided by **Section 3(1)** of the **Land Disputes Tribunal Act**.

In the same vein, the Provincial Land Appeals Tribunal did not have jurisdiction to determine the ownership of the suit land and thereafter give an award evicting the appellant and the members of his family from the land. I do not subscribe to the argument made that in so ruling, the Provincial Appeals Tribunal was determining an issue related to trespass to land. It is obvious that the Provincial Tribunal cloaked itself with jurisdiction it did not have.

The second issue for determination is whether the Provincial Appeals Tribunal properly heard and determined the appeal by re-hearing the witnesses who testified before the Kajiado Land Disputes Tribunal. Section 8 of the Land Disputes Tribunal Act provides that;

“(5) The appeal shall be determined by the Appeals Committee, which shall consist of three members appointed under Section 9.

(6) At the hearing of the appeal, the party bringing the appeal shall begin.

(7) After giving each party an opportunity to state his case the Appeals Committee shall determine the appeal giving reasons for its decision;

Provided that the committee may in its discretion permit the party appealing to reply to the other party’s submission if that submission contains any new matter not previously introduced at the hearing or on appeal.”

It is therefore clear that under **Section 8(7)** of the **Act**, it is contemplated that an appeal(s) shall be

heard by parties making “**submissions**”. A Provincial Appeals Tribunal has not jurisdiction to re-hear the evidence of the parties who testified before the District Land Disputes Tribunal. In the present case, the Provincial Appeals Tribunal ought to have heard the appeal by hearing submissions from the parties appealing before it. The said Appeals Tribunal would then determine the appeal by considering the submissions made and reviewing the evidence and the award made by the District Land Disputes Tribunal. The Provincial Appeals Tribunal in the instant fell into error when it purported to re-hear the witnesses who testified before the Kajiado Land Disputes Tribunal. Its decision cannot therefore stand as the procedure adopted invalidated the final award made.

Finally, this court noted that although the appeal has purportedly been filed by one “**Kimani Muramba.**” From the proceedings of the Provincial Appeals Tribunal, it is evident that the said Kimani Muramba died before even the appeal was canvassed before the Provincial Appeals tribunal. The proceedings at the said Appeals Tribunal were taken over by the brother-in-law of Kimani Muramba, one David Njau. There is no evidence that the said David Njau had obtained letters of administration to grant him authority to represent the estate of Kimani Muramba. It therefore evident that the appeal herein was filed in the name of a deceased person. No application was made to substitute him. Similarly, the proceedings before the Provincial Appeals Tribunal were invalidated by the death of the said “**Kimani Muramba.**”

In the circumstances of this appeal, taking into consideration all the facts of this case, I will invoke the inherent jurisdiction of this court and allow the appeal on the following terms; the award of the Kajiado District Land Disputes Tribunal in respect of parcel No. **NGONG/NGONG/6138** is hereby set aside as the said tribunal did not have jurisdiction to the dispute in respect of title to land. Similarly, the award of the Rift Valley Provincial Appeals Tribunal in respect of parcel No. **NGONG/NGONG/6138** is set aside as there was no competent appeal before it, Kimani Muramba having died before the said appeal was heard and determined.

In view of the circumstances appertaining above, there shall be no order as to costs.

DATED at NAKURU this 18th day of October 2007.

L. KIMARU

JUDGE