

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal 42 of 2003

KEPHA KAMAU NGARI.....APPELLANT

Versus

PETER GITONGA MUKAMA.....RESPONDENT

(Being appeal from the Provincial Land Disputes Appeals Committee Central Province dated 22nd January 2003 in appeal No. 30 of 2002)

JUDGMENT

KEPHAR KAMAU NGARI, the Appellant herein referred his land dispute with the Respondent to the Mathira Land Disputes Tribunal. His complaint was that the Respondent had illegally invaded his land RUGURU/CHIENI/307. In his defence the Respondent stated that he had purchased 1.35 acres of that land. The father of the Appellant had sold him $\frac{3}{4}$ of an acre and the balance was sold to him by the Appellant and his late mother. He prayed that a title of that acreage be issued to him. There was evidence that the land control board consent was obtained for that transaction. Further it was in evidence that after the death of Isaac Ngari, the father of the Appellant, petitioned for grant to be issued to him and the Respondent stated that he understood that he would, after the grant was confirmed, get his land. That did not happen and after hearing that evidence the tribunal gave the following award:

“P. Gitonga is worthy $\frac{3}{4}$ an acre from land No. 307 and plot No. 308”

The Appellant appealed against that award before the Central Province Provincial Land Disputes Appeals Committee. The Appeals Committee on its award ordered the Appellant to transfer 1.35 acres from his property RUGURU/CHIENI/307 to the Respondent.

The Appellant being aggrieved by that order has appealed before this court. In his grounds of appeal the Appellant has argued that the tribunals did not have jurisdiction to entertain the action. The Land Disputes tribunal and the Appeals Committee in making the award gave effect to an alleged contract of sale of land to the Respondent. By so doing the tribunals in effect ordered the Appellant to transfer some of his land to the Respondent. When one considers section 3 of the Land Disputes Tribunal one realizes that such an award was ultra vires of that act. That section provides the tribunals jurisdiction to be 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.”

By virtue of that section it is clear that the tribunal did not have the power to order the transfer of land to the respondent. They certainly did not have jurisdiction to hear a matter which related to a contract for

sale of land. I therefore do find that grounds No. 1 no. 2 4 5 6 and 7 do succeed, for it is the court's finding that the tribunals exceeded their jurisdiction. The Appellant further argued that the award gave a validity to a transaction which was subject to land control board consent. There was indeed no evidence that such consent was granted and virtue of section 6 of the Land Control act Cap. 302 such an agreement to sale having no consent is void in law. For that reason ground 3 of appeal does also succeed. The judgment of this court is that the award and judgment of the Provincial Land Disputes Appeals Committee Central Province in Nyeri No. 30 of 2002 dated 22nd January 2003 is hereby set aside and the Appellant is awarded the costs of this appeal.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 2nd day of November 2007.

By: M. S. A. MAKHANDIA

JUDGE