



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 252 of 2004

JACINTA MUGURE KAGECHE.....APPELLANT

VERSUS

DAVID NG'ANG'A KIOI..... RESPONDENT

J U D G M E N T

On 24/6/04 the appellant moved to this Court by way of appeal, challenging the award of the Provincial land Disputes Tribunal, and the Judgment of the Senior Resident Magistrate's Court at Kiambu, dated 11/3/04 in Case No. 27 of 1998, on the following grounds:

1. The Provincial Tribunal erred in law in adjudicating on a Title No. Githunguri/Kiairia/1092 outside its jurisdiction.
2. The Provincial Tribunal erred in law in deciding on matters of sale of land out of their jurisdiction.
3. The Provincial Tribunal erred in law in declaring the Respondent the purchaser and hence owner of parcel of land thus giving the appellant an unidentified parcel of land at Nakuru.
4. The Provincial Tribunal erred in law in deciding a land matter between two parties who are not registered owners while the Registered owner is alive and without being given an opportunity to be heard.
5. The Tribunal erred in law in failing to appreciate that the appellant had no **locus standi** in the land case and was merely a wife of the Registered owner.
6. The Tribunal erred in law in ordering that the executive officer, Magistrate Court to execute transfer transactions while the award had not even been read,
7. The Learned Senior Resident Magistrate erred in law in failing to appreciate the fact that the Registered owner of L.R. No. Githunguri/Kiairia/1092 is alive, namely Daniel Kageche Mukua despite having been drawn to this fact.
8. The Learned Senior Resident Magistrate erred in law in upholding the award despite objection of **locus standi** by the appellant in that the said award was null and void.
9. The Learned Senior Resident Magistrate erred in law and in fact in failing to recognize that the

Tribunal made an award in the absence of a Registered owner who was alive and on a basis of a complainant who neither had **locus standi** or powers of attorney to act for the owner.

10. The learned Senior Resident Magistrate erred in law in ordering that the orders of the Tribunal be effected and dismissed the appellants objection despite its merits.

11. The Learned Senior Resident Magistrate erred in law and in fact in failing to satisfy himself of the validity of the proceedings of the Tribunal in absence of the Registered owner – Daniel Kageche Mukua – who did not participate in the proceedings and therefore other parties were fighting for his property in his absence hence arriving at a misleading award.

Wherefore the appellant prays for:

- a. Setting aside the award of the Provincial Lands Tribunal as pertains to the transfer of L.R. No. Githunguri/Kiairia/1092.
- b. Setting aside of the Decree and award of the Senior Resident Magistrate dismissing the objection.
- c. Costs of the appeal.

At the commencement of the hearing of this appeal, Learned Counsel for the appellant Ms. Muhuhu abandoned grounds 8 through 11 of the grounds of appeal. This judgment is thus confined to grounds 1 through 7 of the grounds of appeal.

Perusing through the seven grounds of appeal, the critical question, determination which disposes the entire appeal, is whether or not the Provincial Land Disputes Tribunal had the jurisdiction to entertain the appeal at that level. In the event that the answer to the above is in the affirmative, did the subordinate court act lawfully in the circumstances.

I must point out at this stage that a negative answer to the first question on jurisdiction renders the process that followed thereafter superfluous.

The jurisdiction of the Land Disputes Tribunals is stipulated by Section 3 of the Land Disputes Tribunals Act, 1990, No. 18 of 1990.

Under the above section, the jurisdiction the Land Disputes Tribunal is limited or confined to disputes involving: **division of, or the determination of boundaries to land, including land held in common; claim to occupy or work land, or trespass to land.**

For the District Lands Disputes Tribunal, its jurisdiction is limited to disputes stipulated in Section 3(1) and within the area in which the land is situated – and that is the District concerned. An appeal lies, as of right, from the District Tribunal to the Provincial Appeals Committee, and then from there to this court.

In the instant appeal, the jurisdiction of the Appeals Committee is limited to disputes stated in Section 3(1) of the act, within Central Province.

From the records before me, I have no doubt in my mind that the Appeals Tribunal for Central province acted beyond its geographical, as well as subject matter, jurisdiction. The Committee took upon itself to determine issues of title to land, which is not within their jurisdiction as well as land in Nakuru District, which is outside the boundaries of Central Province.

Once it is determined, as I have herein above done, that the Appeals tribunal lacked jurisdiction, all the proceedings and the decisions thereon are a nullity. Accordingly, the Provincial Lands Tribunal decision, pertaining to transfer of L.R. No. Githunguri/Kiairia/1092, which is a matter of title to that parcel of land was null and void and of no legal consequence to the ownership of that parcel of land.

Similarly, the Provincial Lands Tribunal had no jurisdiction to adjudicate on a matter touching on the land in Nakuru, which is not only an issue of title, but also on a parcel of land within Rift Valley province, not Central Province.

To recapitulate, once the Tribunal went beyond its jurisdiction, every proceeding; decision, and orders therefrom, are null and void. This is sufficient to dispose of the appeal before me. But there are other pertinent issues which are raised in the grounds of appeal which I need to mention, even though they make no difference to the overall judgment that I have arrived at.

One of such issues is one of procedure, which goes to the lawfulness of the process followed in the whole transaction in this appeal.

Under Section 7(1) of the Act, it is the Chairman of the Tribunal who is commanded to cause the decision of the Tribunal to be filed in the Magistrate's Court.

In the appeal before me, the Tribunal's decision went to the Subordinate Court by way of a Chamber Summons, dated 14/3/03, and filed in Court on 17/3/03, seeking the court's adoption of the award of the Provincial Lands Disputes Tribunal at Nyeri as Judgment of the Lower court. That clearly was an affront to the provisions of Section 7(1) of the Act. It was therefore unlawful; even though not illegal.

Under Section 7(2) of the Act, the court shall enter judgment in accordance with the decision of the Tribunal, upon which event a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act, Cap. 21, Laws of Kenya.

Two issues arise from the above. The Subordinate Court has no jurisdiction to enter a judgment in accordance with the decision of the Tribunal if that Tribunal's decision is a nullity, from the documentation presented to it by the Tribunal under Section 7(1) of the Act. No court has the power to validate an illegal or null and void transaction.

There are other issues such as the Registered owner of the land not being joined as a party and strangers fighting over the land in the absence of the Registered owner of the parcel of land. My brief view on these issues is simply that even if the registered owner of the land were a party to proceedings before the Tribunal, that could not confer jurisdiction to the Tribunal.

Jurisdiction is a matter of statute – law – not by the parties submitting to a body or tribunal which has no jurisdiction.

All in all therefore, the appeal herein succeeds and I order as follows:

- a) I allow the appeal with costs to the appellant and against the Respondent.**
- b) Set aside the Provincial Lands Tribunal as pertains to the transfer of L.R. No. Githunguri/Kiairia/1092**
- c) Set aside the Decree of the Senior Resident Magistrate dismissing the objection and allowing the award.**

DATED and delivered in Nairobi, this 22nd day of March, 2006.

O.K. MUTUNGI

JUDGE