



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Civil Appeal 84 of 2001

BENSON WAMAI KAHUNGU.....APPELLANT

VERSUS

JANE WANJIRU KAMAU.....RESPONDENT

J U D G M E N T

This suit was initiated in the Kahuro Land Disputes Tribunal by Jane Wanjiru Kamau (*hereinafter referred to as the Respondent*). She sued Benson Wamai Kahugu (*hereinafter referred to as the Appellant*) claiming that her late husband Kamau had bought Land known as Loc/Koimbe/T420 (*hereinafter referred to as the suit land*) from the Appellant's father the late Abiatha Karugu in the year 1963. From that year she has been occupation of the suit land without any problems until May 1999 when the Appellant demanded Kshs.50,000/= from her. The Respondent refused to pay the money and the Appellant thereafter transferred the suit land to one George Kariuki Gitono who entered the suit land and started digging.

The Appellant on his part maintained that the suit land belonged to his late father. In 1962 the Appellant's father borrowed Kshs.50/= from the Respondent's husband. The Appellant's father allowed the Respondent's husband to occupy the suit land on the understanding that he would later redeem the suit land. The Appellant maintained that his father never sold the suit land, but had given the Respondent's husband the option to purchase the land. In 1985 the Appellant's father transferred the suit land to the Appellant. The Appellant conceded that the amount of Kshs.50 had not been refunded to the Respondent's husband, but that in May 1999 He offered to sell the suit land to the Respondent but she refused to buy the land. The Appellant then offered to refund the sum of Kshs.50/= but the Respondent refused to accept the same. The Appellant therefore decided to sell the land to George Kariuki Gitono. The Kahuro Land Disputes Tribunal found in favour of the Respondent and ordered that the suit land be transferred to the Respondent.

Not being satisfied the Appellant appealed to the Central Province, Provincial Land Disputes Appeals Committee. The Appeals committee dismissed the appeal contending that the Appellant's claim was statute barred as per section 13 (3) of the Land Disputes Tribunal Act Number 18 of 1990 since 36 years had elapsed since the Beneficiary took possession of the land.

The Appellant did not give up but brought this appeal under section 8 (9) of the Land Disputes Tribunal Act. Under that section this court can only entertain an appeal against the decision of the Appeals Committee on issues of law excluding customary law. In accordance with that, Hon. Juma J. certified that the appeal raises issues of law.

The Appellant's memorandum of appeal raises 10 grounds which faults the Appeals Committee for failing to note: -

- ***That the Kahuro Land Dispute Tribunal lacked jurisdiction to hear the matter.***
- ***That the Respondent had no locus to bring the suit.***
- ***That the agreement relied upon by the Respondent was void for lack of Land Control Board consent.***
- ***That the suit was statute barred, the Respondent having moved the court 36 years after the alleged agreement.***
- ***That the alleged agreement for sale of land was oral and therefore a contravention of the Contract Act Cap 23.***
- ***That Kahuro Land Disputes Tribunal gave land to a person who was not a party to the sale agreement.***
- ***That the land was now with a 3rd party who was not a party to the agreement.***

The Appeals Committee was also faulted for having failed to give the parties a hearing contrary to the rules of natural justice.

In his submissions Mr. Kirubi who appeared for the Appellant submitted that the dispute between the Appellant and the Respondent touched on title to land and ownership which was outside the scope of the Tribunal's jurisdiction as provided under section 3 (1) of the Land Disputes Tribunal Act. He submitted that the Respondent had no *locus standi* to bring the action as she did not produce any letters of Administration in respect of her deceased husband's estate.

He added that in any case the alleged agreement of sale was void for want of Land Control Board consent and was also a contravention of the Law of Contract Act as it was not supported by any written memorandum or note. Finally it was submitted that the Respondent's claim was statute barred and that the Appeals Committee contradicted itself in failing to allow the appeal on this ground.

Mr. Kinuthia who appeared for the Respondent submitted that the Tribunal had jurisdiction to hear and determine the dispute as the Respondent's claim was a claim to occupy land. With regard to the issue of *locus standi*, a copy of a certificate of confirmation of grant issued to the Respondent on 20th July 1998 was produced. He conceded that in considering the issue of occupation the tribunal went further than required. Nevertheless He urged the court to dismiss the appeal.

From the decision of the Provincial Land Disputes Appeals Committee dated 29th June 2000, it is evident that the Appeals Committee did not discharge its mandate as provided under section 8 of the Land Dispute's Tribunal Act. The record shows that the parties were not heard as the Appeals Committee appeared to have formed an opinion that the matter before them was statute barred hence their reference to section 13 (3) of the Land Disputes Tribunal. That section states as follows: -

“For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court.”

It is apparent from the above that if, as the Appeals Committee appears to have found, the claim arose 36 years ago when the land was allocated to the Beneficiary who was entitled to it, then it was not just the Appeals Committee who had no jurisdiction to entertain the matter but even the Kahuro Land Dispute's Tribunal had no jurisdiction to entertain the matter by virtue of Section 13 (3) aforementioned. The

Appeals Committee therefore ought to have considered whether the dispute fell within the provisions of section 13 (3) of the Land Disputes Tribunal. I concur with Mr. Kinuthia that the decision of the appeals committee was rather contradictory. But the question is: What was the claim before the Kiharo Land Disputes Tribunal and when did the cause of action arise?

There was no copy of the claim filed before the Land Dispute's Tribunal included in the record of appeal. I can therefore only refer to the proceedings before the Tribunal from where I deduce the Respondent's claim against the Appellant to be that the Appellant had in May 1999 purported to sell the suit land which the Respondent was in occupation of pursuant to an agreement of sale entered into between the Respondent's husband and the Appellant's father and that George Gitano the person to whom the Appellant purported to sell the land was interfering with the Respondent's occupation of the land as He had entered the suit land and dug it.

As far as the Respondent's evidence before the tribunal goes, she was not seeking transfer of the land to her but she was seeking protection from interference with her occupation. In this regard the Respondents claim did not arise 36 years ago but arose in May 1999. The claim also fell within section 3(1) (b) of the Land Disputes Tribunal Act which gives the Tribunal jurisdiction to deal with claims to occupy land.

In considering the Respondent's claim however, the tribunal did not limit itself to dealing with the issue of occupation, but it went further to deal with the issue of ownership and title to the suit land and therefore made an award that the suit land belonged to Jane Wanjiru Kamau and the Appellant should transfer the suit land to her within 3 months. It is appreciated that it may have been difficult to separate the issue of occupation from that of ownership. Nevertheless the Land Disputes Tribunal acted in excess of its jurisdiction as provided under section 3 (1) of the Land Disputes Tribunal Act by determining the issue of ownership or title to the land. The Appeals Committee erred in failing to appreciate that the Land Disputes Tribunal acted outside its jurisdiction.

The issues relating to the agreement of sale and whether the same was valid ought not to have been entertained by the Tribunal as they related to the issue of ownership. It is evident that the Respondent has been in possession and occupation of the suit land since 1962, facts which may provide a good ground for a claim on adverse possession. The circumstances also indicate that the Respondent may have had some customary rights to the land. The central issue however was ownership and title to land and those are issues which ought to have been referred to the High Court.

I do therefore allow this appeal and set aside the award of the Kahuro Land Disputes Tribunal and the decision of the Appeals Committee. The Respondent is at liberty to file an appropriate suit in the High Court.

Dated, signed and delivered this 7th day of May 2006.

H. M. OKWENGU

JUDGE