



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

Civil Appeal 149 of 2001

CHRISPUS MBICHI GAKUI.....APPELLANT

VERSUS

KARANJA WAINAINA.....RESPONDENT

JUDGMENT

The appellant, Chrispus Mbichi Gakui and the respondent Karanja Wainaina had a dispute over parcel No. *Nyandarua/Njabini/668*. They referred the dispute to the Nyandarua Land Disputes Tribunal. The tribunal heard the dispute and made its award on the 12th of June 2001. On the 14th of May 2001, the chairman of the tribunal sent the said award to the Principal Magistrate's Court, Nyahururu for the purposes of the said award being adopted as a judgment of the court. When the award was placed before the Resident Magistrate on the 18th of September 2001, the said Resident Magistrate refused to adopt the said award for the reasons that the value of the subject matter was Kshs 451,000/= and therefore exceeded his pecuniary jurisdiction of Kshs 300,000/=. He ruled that he did not have the pecuniary jurisdiction to adopt the said award as the judgment of the court.

The appellant was aggrieved by the said decision of the Resident Magistrate and has appealed to this court. The appellant raised several grounds of appeal whose main thrust to the effect the Resident Magistrate erred in ruling that he did not have the requisite jurisdiction to adopt the said award of the Land Dispute Tribunal as established under the **Land Disputes Tribunal, Act 1990**. At the hearing of the appeal, the respondent failed to attend court. This court was satisfied that the respondent was properly served by the appellant but chose not to attend court. This court ordered the hearing of the appeal to proceed the absence of the respondent notwithstanding.

Mr Okoth, learned counsel for the appellant made submissions reiterating the grounds of appeal. He submitted that the resident magistrate had erred when he ruled that he had no pecuniary jurisdiction to hear and determine the matter which was before him. He submitted that the pecuniary jurisdiction of the resident magistrate was irrelevant when it came to the court adopting an award made by the panel of elders in the proceedings conducted under the **Land Disputes Tribunals Act**. He submitted that, under the said Act, the chairman of the tribunal was required to file the decision of the tribunal in the subordinate court after which the magistrate was supposed to enter judgment and issue a decree. He submitted that the powers of a magistrate when adopting an award made under the **Land Disputes Tribunals Act** was limited. The magistrate was supposed to adopt the award and not question its validity. He submitted that the magistrate's role was procedural and therefore the issue of pecuniary jurisdiction of the said magistrate could not have arisen. He urged this court to allow the appeal as prayed.

I have considered the submissions made by the appellant in this appeal. The appellant has appealed to this court on a point of law. The issue for determination by this court is therefore whether the resident magistrate was right in declining to adopt the award made by the Land Disputes Tribunal under the **Land Disputes Tribunals Act. Section 7 of the Land Disputes Tribunal Act** provides as follows:

“(1) The chairman of the tribunal shall cause the decision of the tribunal to be filed in the magistrate’s court together with any depositions or documents which have been taken or proved before the tribunal.

(2) The court shall enter judgment in accordance with the decision of the tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided under the Civil Procedure Act.”

The application of this section of the Land Disputes Tribunal Act was considered by Nambuye J. in **Mutemi Mwasya –vs- Mutua Kasuva Machakos HC Civil Appeal No. 140 of 2001 (unreported)** where at page 8 of her judgment she held as follows:

“1. The proceedings herein were conducted under the Land Disputes Tribunals Act. The powers given to the magistrate under the said Act No. 18 of 1990 vide Section 7 are that under Section 7(1) the Chairman of the tribunal is required to cause the decision of the tribunal to be filed in court. Under Section 7(2) after the decision is filed the magistrate’s court is directed to enter judgment in accordance with the decision of the tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act. The word used is shall. This means that the power of the lower court is limited mandatorily to:-

- (i) Receive the award from the chairman of the tribunal.***
- (ii) Enter judgment in accordance thereto.***
- (iii) Cause a decree to be drawn in accordance thereto.***
- (iv) Cause the decree to be enforced in accordance with Civil Procedure Act and Rules.”***

It is obvious that once an award is filed in court by the chairman of the Land Disputes Tribunal, the magistrate’s duty is limited to adopting the said award to be a judgment of the court. A magistrate is not supposed to inquire whether or not the land which is the subject matter of the award exceeds or is within his civil pecuniary jurisdiction. The function of the magistrate in adopting an award of the Land Disputes Tribunal is therefore clerical and not judicial in nature. A magistrate cannot therefore entertain arguments by the parties who appeared before the tribunal with a view of establishing whether or not the award made by the land disputes tribunal was lawful or not.

In the circumstances therefore, it is obvious from the reasons stated above that the appeal herein shall be allowed. It is allowed with costs to the appellant. The order of the resident magistrate issued on the 18th of September 2001 is hereby set aside. I hereby order the subordinate court’s file in respect of which this appeal arose to be immediately be sent back to the Nyahururu Principal Magistrate’s court for the purposes of the said award by the Nyandarua Land Disputes Tribunal being adopted as a judgment of the subordinate court as provided for by **Section 7 of the Land Disputes Tribunal Act**.

It is so ordered.

DATED at NAKURU this 23rd day of June 2006.

L. KIMARU

JUDGE

