



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Appeal 327 of 2000

PAUL MUNENGE MUIRU APPELLANT

VERSUS

PATRICK THINDIU MUIRU RESPONDENT

JUDGMENT

On 27/8/2004, the appellant herein moved to this Court, challenging the award/decision of the Central Province Land Disputes Appeals Tribunal in Land Disputes Civil Appeal No. Kiambu 64 of 1999, delivered on 24/5/2000. The appeal is on the following 6 grounds:

- 1. That under the provisions of the Land Disputes Tribunals Act, both the Kiambu District Land Disputes Tribunal and Central Province Land Disputes Tribunal Appeals had no jurisdiction to decide on matters relating to ownership of Registered Land.**
- 2. Both the Kiambu District Land Disputes Tribunal and the Central Province Land Disputes Appeals Tribunal had no jurisdiction to decide on issues relating to trust or declare trust.**
- 3. That Peter Kinuthia Muiro was never a party to the suit and awarding him any had amounted to granting orders never sought.**
- 4. The Kiambu District Land Disputes Tribunal erred in refusing to accord sufficient time to the appellant to call his witnesses.**
- 5. The Respondents claim, if any, had been time barred under the provisions of the Limitation of Actions Act.**
- 6. The evidence for the Respondents was contradictory and did not therefore support the award/decision arrived at by the two Tribunals.**

Wherefore the appellant prays that the appeal be allowed with costs.

The appeal is basically on two legal points: namely the jurisdiction of the Land Disputes Tribunals – whether at the District or Provincial (appeals committee) level; and the second is of limitation period within which the appeal should have been filed.

However, whether I get into those legal issues or not is dependent on the validity of the appeal before me. What is the use of going through all the grounds of appeal herein, and the legal issues involved therein, if the appeal itself is incompetent?

That to me is a preliminary point of great importance in this appeal, which has the potential of disposing off this appeal.

At the hearing of this appeal, on 5/12/05, Learned Counsel for the Respondent, Mr. Kaburu, submitted that the appeal is incompetent and defective because of two legal points:

(a) The Memorandum of appeal filed in this court on 27/8/04 does not pray for nullification of the proceedings of the Land Disputes Tribunals - either at the District or at the Provincial – appeals – level.

(b) The Memorandum of appeal does not contain any prayer to set aside the award/decision of the Tribunal.

Looking at the said Memorandum of Appeal, I totally agree with the Respondent’s Learned Counsel that there is no prayer either to nullify the Tribunals award/decision for want of jurisdiction nor to set aside the Tribunal’s decision/award. All that the Memorandum of appeal prays for is that “the appeal be allowed with costs.”

The big legal dilemma assuming that I allow the appeal with costs, what then? In the absence of prayers to declare null and void the proceedings of the Tribunal, and setting aside the award/decision arising from those proceedings a prayer for allowing the appeal is legally hollow and leaves the Tribunals decision/award, intact.

In brief, this court cannot grant a prayer or an order not, prayed for in the appellant’s memorandum of appeal, and what is prayed for, even if it were granted, is tantamount to sheer waste of judicial time for it does not resolve the dispute between the parties - the appellant and the Respondents herein.

The appeal before me is a Civil Appeal, and falls within the definition of a suit, as per Section 2 of the Civil Procedure Act, Cap. 21, Laws of Kenya where a suit is defined to mean “all civil proceedings commenced in any manner prescribed.”

Order 41, which deals with appeals, provides, under Rule 1, what every appeal shall provide in the Memorandum of appeal, while Order 42 – appeal from orders – provides, under rule 2 that “the rules of Order 41 shall apply, so far as may be appropriate to appeals from orders.”

The brief point, which is trite law, is that just like in any plaint, there must be prayer or prayers, for the desired relief or remedy or remedies, and the court cannot grant a relief or remedy that is not prayed for.

Accordingly, and for the above reasons, I dismiss the appeal herein, with costs to the Respondent and against the appellant.

DATED and delivered in Nairobi, this 28th day of November, 2006.

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O.K. MUTUNGI

JUDGE