

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI
CIVIL APPEAL NO 58 OF 2002

JOHN KIBE THUO.....APPELLANT

Versus

DANIEL NDUGU MUCHUNA.....RESPONDENT

JUDGMENT

In this appeal the Appellant John Kibe Thuo was the registered owner, under the Registered Land Act, of a parcel of land known as **CHINGA/GATHERA/S 202** measuring approximately 2.43 hectares or 6.00 acres. That parcel of land was a subdivision from parcel No. **CHINGA/GATHERA/S 121** which in turn had been a partition from **CHINGA/GATHERA/101**.

The Appellant and four other people had got registered as co-proprietors of parcel of land **CHINGA/GATHERA/101** on succession or transmission before they partitioned that land into five parcels numbers 121, 122, 123, 124 and 125 on 10th September 1966 so that on sharing the partitions out among the co-proprietors, the Appellant obtained parcel number 121 which he subsequently sub-divided into parcels number S 201, S 202, S 203 and S 204 on 8th March 1978 all the four resulting portions being registered in the Appellant's name. Parcels number S 201 and number S 202 is approximately 2.43 hectares each. Parcel number S 203 approximately 2.08 hectares and parcel number S 204 approximately 1.10 hectares.

Although therefore when commencing litigation in Othaya Land Dispute's Tribunal, the Respondent said the disputed parcel of land was **CHINGA/GATHERA/101**, by the end of litigation in the Provincial Land Disputes Appeals Committee, Central Province, it had emerged clearly that the disputed parcel of land was **CHINGA/GATHERA/S 202** only. Talk of succession proceedings should therefore be handled carefully as succession proceedings had actually been concluded by the registration of the Appellant and the four co-proprietors on 19th March 1966 on the land register of parcel No. **CHINGA/GATHERA/101** and the subsequent partition of that parcel of land on 10th September 1966. The parties did not bring before me the magistrate court order in the succession proceedings. However, it is not correct to say that the subject matter of the case in the Tribunals was parcel of land No. **CHINGA/GATHERA/101**.

Having said the above, I decide to be brief and state the following: The Respondent went before Othaya Land Disputes Tribunal and filed a case claiming five acres from parcel of and No. **CHINGA/GATHERA/S 202** which was registered in the name of the Appellant under the Registered Land Act. The Respondent succeeded and as a result the Appellant appealed to the Provincial Land Disputes Appeals Committee Central Province. The Appellant's appeal was dismissed as the Appeals Committee upheld the decision of Othaya Land Disputes Tribunal.

The decision of the Provincial Land Disputes Appeals Committee was filed in the Chief Magistrate's Court at Nyeri as Award No. 71 of 2000 and was subsequently adopted as a judgment of that court. Thereafter the Appellant came to file this appeal in this court on the ground that the Provincial Land Dispute's Appeals Committee had no jurisdiction because the proceedings related to title to land. The appeal is opposed by the Respondent and without going into details, it is my findings that the appeal has the following problems:

Firstly, the Appellant submitted to the jurisdiction he is now claiming the Tribunals lacked and went willingly through the whole process up to entering of the judgment by the Chief Magistrate's Court

without any protest as to jurisdiction. In fact, the fact that the Appellant had to file this appeal out of time clearly indicates he had completely submitted to the jurisdiction of the Tribunals both at Othaya and at the Provincial level, filing no application in the Chief Magistrate's Court to set aside the decision of the Provincial Land Disputes Appeals Committee and allowing that decision to become a judgment of the court. This appeal was therefore filed as an after thought aimed at delaying ends of justice in this matter. Otherwise the Appellant's first re-action in the litigation should have been to raise objection before Othaya Land Dispute's Tribunal on the ground of jurisdiction and if overruled, to move the High Court appropriately before that Tribunal's decision became a judgment of a magistrate's court. He should not have appealed to the Provincial Land Disputes Appeals Committee as the filing of such an appeal is further evidence of submission to the Jurisdiction of the Tribunals or the Provincial Land Disputes Appeals Committee. From what the Appellant has done therefore, he is estopped from denying the jurisdiction of the Provincial Land Disputes Appeals Committee or Othaya Land Disputes Tribunal.

Secondly, the record of appeal is irregular as to the decision against which this appeal has been preferred.

Thirdly, leave if any, allowing the Appellant to file this appeal out of time, has not been displayed in this appeal.

Fourthly, the Chief Magistrate's Court at Nyeri having adopted the decision of the Provincial Land Disputes Appeals Committee as a judgment of that court, the legal effect of this appeal before me becomes controversial as how can this court ignore the existence of a lawful judgment entered by another court of law even if that other court is subordinate to this court? That judgment exists and there is no appeal against it. Nobody is questioning it.

True provisions of the Land Dispute Tribunal Act do not say anything about appeals against judgments of subordinate courts entered in terms of Section 7 of that Act, but does that mean that such a judgment is of no legal effect and can be ignored in appeals such as this one?

Otherwise framers of the Land Dispute Tribunal Act should amend the Act as litigants are not proving to be as gentle as the Legislature apparently thought would be the case and Land Disputes Tribunals as well as Provincial Land Disputes Appeals Committees are not prepared to confine themselves within the limits of their jurisdiction.

From the foregoing, the Appellant's appeal herein is hereby dismissed with costs to the Respondent.

Dated this 18th day of March 2005.

J. M. KHAMONI

JUDGE