



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE 111 OF 2004

GEORGE GITARI KAMWERE.....1ST PLAINTIFF/APPLICANT

DUNSTAN MACHARIA KAMWENE.....2ND PLAINTIFF/APPLICANT

Versus

HARMIT SINGH CHOD.....1ST DEFENDANT/RESPONDENT

WILSON MWANGI NGARI.....2ND DEFENDANT/RESPONDENT

GIKUYO KAARA.....3RD DEFENDANT/RESPONDENT

KAHOME MUTTA.....4TH DEFENDANT/RESPONDENT

MUTURI KANYUIRA.....5TH DEFENDANT/RESPONDENT

JENIFER MWANGI.....6TH DEFENDANT/RESPONDENT

ROBERT KAIRU MURIUKI.....7TH DEFENDANT/RESPONDENT

*Issues:*

*(a) Whether a Land Disputes Tribunal is a “court”*

*under S. 3 of the Registered Land Act.*

*(b) When the court has no jurisdiction in matters of boundary disputes.*

RULING

Before me is Chamber Summons dated 8th June 2004 where I have been told by Mr. Wanjohi, Counsel for the Plaintiffs/Applicants, that the only substantive prayer remaining in that application to be granted is prayer number five stating:

***“THAT the Defendants whether by themselves, their servants, agents, associates and others or any of them whatsoever be restrained from entering the property known as KONYU/GACHUKU/80 trespassing therein using the foot-path carved out on 23.3.2003 cutting across the same or in any way interfering with the Plaintiffs’ possession and quiet***

***enjoyment thereof pending the hearing and determination of the suit.”***

The application is brought under Order XXXIX Rules 1, 2 and 3 of the Civil Procedure Rules and Section 3A of the Civil Procedure Act.

The suit parcel of land is the registered property of the First Applicant who is a younger brother of the Second Applicant. The First Applicant resides in Nakuru and has authorized the Second Applicant to cultivate the suit parcel of land and take care of it.

Some people said to be residents of the area where the land is situated are alleged to have invaded the land and opened the access road complained of and as a result the two brother Applicants have filed this suit as Plaintiffs and are now prosecuting this Chamber Summons as an interlocutory application in the suit.

Although I have been subjected to some lengthy hearing, I propose to be brief in my ruling.

Firstly, the issue is whether there is a lawful public road of access. The public have already opened one and that is the road about which the question above is being asked.

Secondly and on proper construction of the law, if the dispute relates to boundary of land registered under the Registered Land Act, the Land Registrar should go to the area to settle the dispute first in accordance with Sections 21, to 24 (inclusive) of the Registered Land Act, Cap. 300 Laws of Kenya. Thereafter, if necessary, the Land Disputes Tribunal of the area will have jurisdiction under Section 3(1) of the Land Disputes Tribunals Act 1990, to handle the resulting civil litigation. The Tribunal will now be handling a civil case founded upon the Land Registrar’s determination of the dispute aforesaid.

If on the other hand the road of access being claimed is on unregistered land, it is the Land Disputes Tribunal which should handle the dispute first in accordance with Section 3(1) of the Land Disputes Tribunals Act 1990.

In either case, that is whether the dispute is over registered land under the Registered Land Act or other land no court at that stage would have jurisdiction to entertain any action or other proceedings relating to the determination of boundaries including roads of access, or a claim to occupy or work land, or trespass to land. Section 21(4) of the Registered Land Act and Section 3(1) of the Land Disputes Tribunals Act 1990 are clear having exclusively and respectively given jurisdiction to the Land Registrar and the Land Disputes Tribunal. Of course a resulting criminal prosecution, which would go straight to court after determination of the dispute by the Land Registrar is not in issue in this matter.

It means that this court at this stage in these proceedings lacks jurisdiction to entertain the suit and therefore ought not to issue an order like the injunction being asked for in prayer number five of the Chamber Summons dated 8th June 2004.

I should perhaps point out that though Parliament enacted the Land Disputes Tribunals Act 1990 giving Tribunals the jurisdiction seen in *Section 3(1)* of that Act, Parliament did not repeal Sections 21 to 24 (inclusive) of the Registered Land Act then in existence. Those provisions of the Registered Land Act therefore exist today side by side *Section 3(1)* of the Land Disputes Tribunals Act 1990 and where the relevant dispute concerns land registered under the Registered Land Act as is parcel of land in question before me, KONYU/GACHUKU/80, a Land Disputes Tribunal may not arrive at a lawful decision without having had the benefit of either a prior decision of a Land Registrar or an instant service of a Land Registrar.

Further to the jurisdiction conferred by Section 3(1) of the Land Disputes Tribunals Act, a Land Disputes Tribunal gets its jurisdiction in matters relating to land registered under the Registered Land Act by virtue of Section 159 of the Registered Land Act. For that reason a Land Disputes Tribunal becomes a court according to the interpretation of a court as seen under Section 3 of the Registered Land Act which says that “*the court*”,

**“except as otherwise expressly provided, means the court having jurisdiction in the matter in question by virtue of Section 159;”**

Therefore when Section 21(4) of the Registered Land Act states that:

***“No court shall entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this Section”***

a Land Disputes Tribunal is included as a court so that, like an ordinary court, a Land Disputes Tribunal cannot:

***“-----entertain any action or other proceedings relating to a dispute as to the boundaries of registered land unless the boundaries have been determined as provided in this Section.”***

meaning Section 21 of the Registered Land Act.

The operative word is

***“entertain”***

meaning that the Land Registrar must act or make his decision before the action or other proceedings referred to in Section 21(4) are filed in the Court or Tribunal. It follows that when a Land Disputes Tribunal entertains such proceedings without the parties having complied with Section 21(4) of the Registered Land Act, that Land Disputes Tribunal entertains the matter in contravention of Section 21(4) of the Registered Land Act. The dispute in this matter is over a road of access. A road of access does not exist and cannot be seen without having its boundaries on both sides visible. Normally there would be boundary marks to identify the extent of that road. Where there is a dispute as to whether or not there exists a road of access at a given area, the question of the boundaries of that road is very much alive. Such a dispute therefore necessitates the marking or the identification or the pointing out of boundaries of that disputed road of access by a Land Registrar and that work falls in the category of boundaries – covered by provisions of Sections 21 to 24, inclusive, of the Registered Land Act.

Otherwise having said all I have said above, I would conclude this ruling by saying that since the issue in this matter is whether or not there is a lawful public road of access and that issue is yet to be resolved on evidence, the balance of convenience requires that no injunction, be issued before the trial in the main suit is concluded and the suit determined especially in this case where there is a further dispute as to whether the Respondents are the right Defendants and therefore responsible for the opening of the road in question.

The above being the position, this Chamber Summons dated 8th June 2004 be and

is hereby dismissed with costs to Respondents.

***Dated this 10th day of June 2005.***

**J. M. KHAMONI**

**JUDGE**