



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
Civil Appeal 1 of 1998

GICHOBI KITHAE PLAINTIFF

VERSUS

KABUKO GITHAE & 3 OTHERS DEFENDANTS

(Appeal from Decision of Central Lands Disputes Appeals Board in Kirinyaga Appeal

No. 5 of 1997 dated 26th November 1997)

J U D G M E N T

Gichobi Kithae hereinafter referred to as the Appellant was one of the Defendants in a land dispute over land parcels Kabare/Njuku/191 and Baragwi/Guama/446 which was heard by the Gichugu Land Disputes Tribunal and an award issued for subdivision of the two parcels of land into 6 portions to give to the Appellant, his Co-Defendant and the four Plaintiffs Kabuko Githae, Kiura Githae, Muriuki Kithae and Mary Wanjiru (who are the Respondents herein).

Being dissatisfied the appellant preferred an appeal to the Central Land Disputes Appeals Committee at Kianyaga. The appellant raised 5 grounds of appeal as follows:

- That the District land Dispute Tribunal Kirinyaga District erred in law and fact in trying a matter where there were no pleadings.
- That the land Dispute Tribunal failed to take into account that the appellant did not know the subject matter until very late and was not given a chance to call witnesses. ·

That the land Dispute Tribunal erred in law in hearing a matter that dealt with the title to the land of Gichobi Kithae to wit Kabare/Njuki/191, while all the Respondents do not live and have never lived on the said land.

- That the arbitration panel failed to find as a fact that it was too late for the Respondents to claim land they have never occupied and decide that the Respondents claim was time barred.
- That the tribunal failed to find that land parcel number Kabare/Njuki/191 wholly belongs to the Appellant.

The Appeals Committee having heard the parties and evidence from clan elders upheld the award made by the Tribunal.

The appellant has now lodged an appeal before this court challenging the decision of the Appeals Committee on the following grounds:

- That the appeals committee erred in law in failing to address its minds to the grounds of appeal filed before it.
- That the Appeals Committee erred in law in conducting the appeal as though it was a first hearing.
- That the Appeals Committee erred in law in failing to determine that the Kirinyaga District Lands Dispute Tribunal did not have jurisdiction to determine the suit herein.
- That the Appeal Committee erred in law in failing to come to the conclusion that the claim against the appellant was statute barred and therefore wrongly confirmed the decision of Kirinyaga District Lands Dispute Tribunal.
- That the Appeals Committee erred in law in failing to make a finding that there being no pleadings as provided for by the Lands Dispute Act, the proceedings in Kirinyaga District Lands Dispute Tribunal were a nullity ab initio.

Mr. Kamuga who appeared for the Respondents submitted that the appellant ought to have come by way of judicial review and not by way of appeal. He also submitted that the Appeals Committee was right in re-hearing the matter afresh and coming to its own conclusion.

It is evident from section 3 (2) of the Land Disputes Tribunals Act (18 of 1990) that:

“every dispute shall be instituted by presenting a claim to the Tribunal for the area in which the land is situated, and shall contain and contain only, a summary of the material facts on which the claimant intends to rely”

The record of appeal does not reveal that any such claim was presented to the Tribunal, nor does the original record from the Land disputes Appeals Committee reveal any such claim. The appellant’s contention that the land Disputes Tribunal erred in entertaining the dispute without any claim having been presented to it was therefore substantiated by the record of appeal.

It is apparent from the proceedings which were before the tribunal, that the Respondents claim was not very clear. Although they appeared to want land parcels Baragwi/ Guama/446 and Kabare/Njuki/191 subdivided among Kithae’s children it is not clear what the basis of that claim is. A copy of one of the titles Kabare/Njuki/191 was produced and the land is registered in the name of the Appellant. A reasonable construction of the dispute would be that it related to title to the land and possibly whether same was held by the registered proprietor in trust. In the award the Land Disputes Tribunal concluded that the two parcels of land should be combined and then subdivided into 6 portions. There is however no reason or finding as to how that conclusion is arrived at. Moreover the claim did not relate to or determination of boundaries to land such as would have justified the intervention by the Tribunal.

It is evident that the appeal lodged by the Appellant against the award of the land Disputes Tribunal raised substantial issues. These were never addressed by the Central Land Disputes Appeals Committee which therefore failed to address the crucial issue of jurisdiction.

Moreover the procedure adopted by the appeals committee as rightly pointed out by Mr. Ndirangu who appeared for the appellant was wrong in that they ignored the proceedings of the Land Disputes Tribunal and heard the dispute afresh. The matter before the Committee having been an appeal the committee ought to have reconsidered and evaluated the evidence which was tendered before the Tribunal and only call further evidence in respect of specific issues where the need for such evidence has been justified. It was submitted to this court that the appellant ought to have come by way of judicial review and not appeal.

It is true that the appellant could have sought orders of certiorari or prohibition with regard to the proceedings before the land Disputes Tribunal. That did not however deprive the appellant his right of

appeal under section 8(9) of the land Disputes Tribunal where a decision had been arrived at by the Appeals Committee. The appeal is therefore properly before this court.

The upshot of the above is that the land Disputes Appeals Committee erred in failing to properly consider the appeal which was before it. The Appeals Committee also erred in failing to find that the Tribunal had no jurisdiction to entertain the dispute. First, because no claim had been presented to it, and secondly, because the dispute did not relate to matters prescribed in section 3(1) of the land Disputes Tribunal Act i.e.

- (a) The division of, or the determination of boundaries to land.
- (b) A claim to occupy or work land
- (c) Trespass to land

I therefore allow this appeal and set aside the decision of the Central Land Disputes Appeals Committee in Appeal No. 5 of 1997 delivered on 26th November 1997 and substitute it thereof with an order setting aside the undated award of the Gichugu Land Disputes Tribunal, the same was made without jurisdiction. Those shall be the orders of this court.

Dated signed and delivered this 20th day of July 2005,

H. M. OKWENGU

JUDGE