



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU
CIVIL APPEAL NO. 1 OF 2001

MONICA MUTHONI KIHARA APPELLANT

VERSUS

JAMES KIHARA MACHARIA RESPONDENT

J U D G M E N T

Monica Muthoni Kihara hereinafter referred to as the Appellant has appealed against the award made by the Provincial Land Disputes Appeals Committee Central Province sitting in Appeal case No. Kirinyagah 185/2000 which award was adopted by the District Magistrate's Court Wanguru as a judgment of the court. In her memorandum of appeal, the Appellant, has raised 3 main grounds: ·

That the Tribunal Appeals Committee lacked jurisdiction to entertain the dispute.

· That the Tribunal Appeals Committee erred in not finding that the Appellant was the legal owner of rice holding No. 716.

· That the Appeals Tribunals award was against the laws of natural justice.

In accordance with section 8(a) of the Land Disputes Tribunal Act No. 18 of 1990 Hon. Juma J. did certify the appeal as disclosing points of law.

It is not clear from the record of appeal how this dispute originated. It is however evident that on 5th June 2000 the dispute was deliberated upon by a panel of elders and an Award was arrived at as follows:

1. The Manager Irrigation Board to restore the ownership of all Holdings 420 and 716 respectively to Mr. James Kihara Macharia forthwith.

2. Mrs. Monica Kihara should go back to her matrimonial home and live as a wife of Mr. James Kihara. Their matrimonial relationship should be left intact.

3. Children of Mr. James Kihara and his wife Monica Kihara should not be a stumbling block in placing a wedge in their parents relationship.

This award appears to have been filed in D.M's Court at Wanguru because on 27th June 2000 an order in the above terms was issued by the District Magistrate Wanguru in what is described as Arbitration No. 14 of 2000 giving the parties 30 day right of appeal. Thereafter the dispute appear to have landed before the Provincial Land Dispute Appeals Committee Central Province wherein an award was made upholding the

Wanguru Land Disputes Tribunals decision to the effect that

- (a) The Manager of Irrigation Board should restore the ownership of Rice Holdings Nos. 420 and 716 respectively to Kihara Macharia forthwith.**
- (b) Mrs. Monica Kihara should go back to her matrimonial home and live as Kihara's legal wife.**
- (c) There should be no interference by the children so as to create confusion and misunderstanding between Kihara and his wife Monica whatsoever**
- (d) All land and property belonging to James Kihara should be registered in Kihara's name and the children should not be registered in Kihara's property when he is alive**
- (e) James Kihara should as a matter of urgency build a house for his wife Monica Muthoni Kihara which is alleged to have been demolished by Kihara sometime ago**

On 30th November 2000 an order was made by the District Magistrate Wanguru authorising the Executive officer Kerugoya SRM's court to sign the necessary documents to enforce the restoration of Holdings Nos. 716 and 420 to James Kihara Macharia and further directing the Manager National Irrigation Board to restore the Holdings in question to James Kihara.

That is the back ground against which the Appellant lodged this appeal.

From the above it is evident that the parties herein are spouses and the dispute between them was more or less a matrimonial dispute which involved certain properties which were being claimed by each of the spouses. It is further evident that the properties were rice Holdings within the National Irrigation Scheme which falls within the powers of the National Irrigation Board.

The District Land Tribunals and the Provincial Land Disputes Appeals Committee were created by the Land Tribunal Act No. 18 of 1990 the jurisdiction of the Land Disputes Tribunal is clearly provided under section 3(1) of that Act which states: Subject to this Act, all cases of a civil nature involving a dispute as to –

- (a) the division of , or the determination of boundaries to land, including land held in common;**
- (b) a claim to occupy or work land; or**
- (c) trespass to land, shall be heard and determined by a Tribunal established under section 4.**

Nowhere in this Act is the District Land Disputes Tribunal of the Provincial Land Disputes Appeals Committee given jurisdiction to arbitrate over matrimonial disputes or to deal with disputes involving Rice Holdings licenced by the National Irrigation Board. The jurisdiction of the Provincial Land Disputes Appeals Committee is by virtue of section 8(1) of the Act Limited to appeals against the decisions of the land Disputes Tribunal. Such appeals can only be within the armpit of the Act. It is evident therefore that both the District Lands Tribunal and the Provincial Land Disputes Appeals Central Province which arbitrated on this matter acted outside the authority given to it by the Act. It is evident from the record of the proceedings and the award filed in court that both tribunals purported to be acting in accordance with the Lands Disputes Tribunal Act and their authority was therefore limited and not wide as that of an Arbitrator appointed under order XLV of the Civil Procedure Rules.

Moreover the orders made by both Tribunals were orders infringing on the Respondent's personal liberty and freedom as enshrined in the constitution and was hardly capable of enforcement. The upshot of the above is that the Appellant has satisfied this court that the Tribunal erred in law in arbitrating over a matter in respect of which it had no jurisdiction.

I do therefore allow this appeal and set aside the Awards made by both the land Disputes Tribunal and the

Provincial Land Disputes Appeals Committee. The Appellant shall have costs of this appeal.

Orders accordingly.

Dated signed and delivered this 27th day of February 2004.

H. M. OKWENGU

JUDGE

27/2/04