



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI  
CIVIL APPEAL NO. 502 OF 2000

MUNYUI KAHUHA ..... APPELLANT

VERSUS

NG'ANG'A KAHUHA ..... RESPONDENT

(An Appeal against the Ruling and Order of the  
Central Province Provincial Land Disputes Appeals  
Committee dated 3rd August, 2000)

JUDGMENT

The Appellant herein is dissatisfied with the decision of the Central Province Provincial Land Disputes Appeals Committee dated 3rd August 2000 upholding the decision of Kiamba Land Disputes Tribunal to the effect that Land parcel No. Kiamba/Ruaraka/104 be shared equally (1.9 acres each) between the Appellant and the Respondent. The two parties are brothers, Munyui Kahuha being younger to Ng'ang'a Kahuha. Their dispute is over ownership of the suit parcel of land the Respondent claiming that he bought the land jointly with the Appellant contributing Shs 800/= and the Appellant Shs 1800/= for a total of Shs 2600/= paid to the seller through the Appellant.

They decided that the land be registered in the name of the Appellant so that the Respondent could benefit from the then expected allocation of land, in the white settlement, to landless people. The Appellant does not accept the respondent's claim as the Appellant claims to have bought the land alone and explains that that is why he got registered alone under the Registered Land Act as owner of that land. He says his mother and the Respondent were in detention by then. When they were released, they went to live on the suit parcel of land together with the Appellant.

After about 40 years of stay the Respondent claims that the Appellant wants to evict him. That is why the Respondent went to the Land Disputes Tribunal at Kiamba to institute these proceedings against the Appellant claiming ownership of a portion of the suit parcel of land. That Tribunal in its decision dated 11th December 1997 shared the land half-half between the Respondent and the Appellant. The Appellant appealed to the Provincial Land Disputes Appeals Committee Central Province and lost the appeal as the decision of the Land Disputes Tribunal at Kiamba was upheld.

The Appellant has now appealed to this Court, and in accordance with the Provisions of the Land Disputes Tribunals Act, particularly subsections 8, 9 and 10 of Section 8 of the Act, this appeal is on matters of law only. This court should not go into matters of fact and customary law is, for the purpose of that Act, a matter of fact

From what has been brought to my attention, there is one fundamental question of law and that is whether the Land Disputes Tribunal at Kiamba and the Provincial Land Disputes Appeals Committee had jurisdiction to entertain and hear the dispute between the Appellant and the Respondent. Section 159 of

the Registered Land Act as read with Section 3 (1) of the Land Disputes Tribunal's Act make it clear as to the jurisdiction of Tribunals under the Land Disputes Tribunal Act. Disputes as to title to land are out of the jurisdiction of Tribunals. This is what section 3(1) says:

“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”.

It is clear in this case the Respondent's claim was for title to land, right from the word go before the first Tribunal. His plea was: My brother wants to evict me from our land. Please order him to give me my separate title as he holds the title in the suit land in trust for himself and for me. We bought the land jointly.

Land Disputes Tribunals and Provincial Land Disputes Appeals committees hardly like to work within limits of their jurisdictions and parties, by law not permitted legal representation, go before the Tribunals and Provincial Land Disputes Appeals Committees without caring to know there are limits to exercising jurisdiction, and battle their respective cases up to the end before the losers go to the High Court, where representation by advocates is permitted, to inform the Court that they have suddenly realized there are limits in exercising jurisdiction and that where they first went, the Land Disputes Tribunals and Provincial Land Disputes Appeals Committees who handled their cases had no jurisdiction to adjudicate in disputes over title to land and that because the opposite sides won, they, the losers, want all those proceedings nullified because of lack of jurisdiction on the part of Land Disputes Tribunals and Provincial Land Disputes Appeals Committees who decided the cases.

These are parties who never raise objections on the ground of lack of jurisdiction on the part of Land Disputes Tribunals and Provincial Land Disputes Appeals Committees who entertain, hear and decide every dispute relating to land taken before them (Tribunals and Appeals Committees) lack of jurisdiction notwithstanding. Of course the successful parties before Land Disputes Tribunals and Provincial Land Disputes Appeals Committees hardly concede there was lack of jurisdiction on the part of Land Disputes Tribunals and Provincial Land Disputes Appeals Committees and the whole situation gives a good reflection of how irrational our society behaves so that it is the fluent, the flowery languaged, the loud mouthed, the sweet speaker, the orator, the cunning and the likes, who wins the day in the public eye however irrational he may be. In this matter therefore, neither the Land Disputes Tribunal at Kiamba nor the Provincial Land Disputes Appeals Committee, Central Province, had the jurisdiction.

I said the question of jurisdiction was a fundamental legal question. Another which is not fundamental but also important is the handling of the Tribunal's or Appeals Committee's decision by Resident Magistrate's Court. Parties always go to the High Court on appeal ignoring to put before the High Court, in addition to the other relevant records filed, proceedings which may have gone on in a Resident Magistrate's Court where the decision of either the Tribunal or the Appeals Committee may have been subsequently filed; and surprisingly parties will try to suppress any such information so that it does not reach the High Court. They want to keep it out of the High Court.

With all due respect, that is not proper. Let all that come before the Appellate Court as it is part of the decision of the Tribunal or decision of the Provincial Appeals Committee for where such a decision has been adopted by the Resident Magistrate's Court in accordance with the provisions of the Land Disputes Tribunals Act, that adoption makes the decision of the Tribunal or the decision of the Provincial Appeals Committee, a decision of the Resident Magistrate's Court. Where such a decision of the court exists therefore, what is the propriety of appealing against the mother decision of the Tribunal or mother

decision of the Provincial Land Disputes Appeals Committee which in law no longer exists as such as what is in existence is a decision of the Resident Magistrate's Court?

In the appeal before me, both counsel assured me that the decision of the Provincial Land Disputes Appeals Committee has not to-date been filed in any court. But they did not impress me that they were sure of that and definitely knew very little about the movement of the Kiamba Land Disputes Tribunal's decision to a Resident Magistrate's Court. As I write this judgment, I read in one of the documents authored by the Appellant that the decision of Kiamba Land Disputes Tribunal dated 11th December 1997 was

*“delivered in the*

*Senior Principal*

*Magistrate's court*

*at Kiambu on 4/6/98”.*

That was before the appeal to the Appeals Committee was preferred although date of filing not revealed. There was no order for a stay of adoption – and the position as to where that matter stands in Kiambu court has not been revealed to this court. Are the parties driving at inconsistent court orders? Do such orders resolve anything?

But since parties in this appeal do not seem to mind having inconsistent court orders and in case such a situation arises as a result of my final decision in this appeal and bearing in mind what I have said that neither the Land Disputes Tribunal at Kiamba nor the Provincial Land Disputes Appeals Committee, Central Province, had the jurisdiction to adjudicate on the issue of title in this matter, I do give the parties my final decision in that this appeal be and is hereby allowed with costs to the Appellant.

Dated this 6th Day of June 2003.

J.M. KHAMONI

JUDGE

Present:

Mr. Kurauka for the Appellant.