



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL No 202 OF 1999

HEZEKIAH KUNGU KINUTHIA APPELLANT

VERSUS

ERNEST KAMAU KINUTHIA RESPONDENT

JUDGMENT

This is an appeal against a decision of a Senior Resident Magistrate's Court at Kiambu, a decision which adopted the award of a provincial land disputes tribunal.

The appellant was admittedly a proprietor of a piece of land and he held a registered title under the Registered Land Act (Cap 300) as a freehold owner.

Under the lands disputes tribunal system, a provincial land dispute tribunal found and decided that in the nine acres of the disputed land of the appellant there were three acres of the respondent. It awarded that the respondent "be given his right of three acres for which he paid shs 2,000".

By section 3(1) of the Land Disputes Tribunals, a land disputes tribunal has the jurisdiction to hear and determine 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.

For the land disputes tribunal to have decided that the respondent had a right to three acres out of the land registered under the name of the appellant as absolute owner, the tribunal had to examine and determine the issue of who had title to the registered land and the extent of that right or title, and how the right to title arose.

The tribunal must of necessity, have found and been satisfied, that although the appellant was the registered proprietor of the entire land, he was holding three acres of that land in trust for the respondent. The only other alternative way of understanding the tribunal's decision must have considered that the title to the land was a joint title in proportions six acres for the appellant and three acres for the respondent.

In other words, the decision of the tribunal must have entailed a determination of issues of trust and of title. But in accordance with the case of *Nekesa v Wanjala* in the Court of Appeal at Kisumu, Civil Appeal 23 of 1985; and the two High Court cases decided by my illustrious senior brother Aganyanya, J, in *Mwathi v Mbogo*, Civil Appeal 531 of 2000, and *Thiga v Macharia*, Civil Appeal 460 of 2000, in February and May this very year, respectively, cases of a civil nature involving a dispute as to title or as to trust fall outside the jurisdiction of land disputes tribunals.

Matters of title are dealt with by statute. For instance, the Registered Land Act (cap 300) is devoted to

proprietorship and various interests in and over land registered under it. The Limitation of Actions Act (cap 22) covers questions of a time stop to litigation over land. If rectification of a land register is desired and sought it will be considered within the confines of section 143 of the Registered Land Act, and in the court.

Arbitration by elders constituting a land disputes tribunal is not intended to deal with matters connected with title to land so as to reverse the provisions of statute and redistribute land and reallocate titles to land; nor can such arbitration get into trust law. Legal issues of adverse possession, the trust concept, and the land laws of this country, are simply beyond even the slightest comprehension of lay tribunals however much the pretensions of grasp may be. This reality aside, the statute creating these tribunals and defining their jurisdiction loudly excluded these complicated concepts and fundamental rights from the jurisdiction of the tribunals.

Any decision of a land disputes tribunal which impinges upon the title of a proprietor of land, or which is based on the trust concept must be struck down as a nullity, and it will be set aside. Likewise a decision of the tribunal which goes contrary to the law, such as the statute of limitation, will not be allowed to stand. Parliament never intended to set up a tribunal which is free to act outside the jurisprudence of this land.

By ordering a registered proprietor of a piece of land to give a part of it to someone else a tribunal disturbs title and in effect directs compulsory acquisition and forced surrender of a portion of one's title. That is what happened in this case.

I hold that the tribunal adjudicated over matters and questions beyond its jurisdiction, namely, title to land and trust issues, and by reason thereof its decision was a nullity. And, as a nullity there was nothing which the magistrate's court could record as a judgment of the court.

Accordingly, this court orders the setting aside of the proceedings before the relevant tribunals and the judgment entered on the basis of the tribunals' awards, and I further order that any order made after the nullified judgment is also a nullity and of no effect.

The appeal is allowed.

Signed and dated by me at Nairobi, this 23rd May, 2002.

R KULOBA

JUDGE

23.5.2002