



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 1202 OF 2002

DAMARIS KANUTHU KANGETHE.....APPLICANT

VERSUS

KANDARA LAND DISPUTE TRIBUNAL & FIVE

OTHERS.....RESPONDENT

RULING

This is an application for an order of certiorari to remove into High court and quash the orders of the Land Dispute Tribunal in Civil Case No. 136 of 2001 Kandara and the orders of Senior Principal magistrates Court at Thika D.O.'s case No. 69 of 2001 on the ground that the land Disputes Tribunal Kandara acted in excess of its jurisdiction.

The applicant Damaris Kanuthu Kangethe has inherited Land title No. Loc 5/ Kagunduini/1351 from Wanjiru Kimundu (deceased) vide succession cause No. 195/55 – Thika

The Abstract of title shows that Wanjiru Kimundu was registered as proprietor on 20.8.65 and the parcel is shown in Registry map sheet no.3 That Land is contiguous to Land title No. Loc 5/Kagundui/1353 which envelopes the applicant's land. Land parcel no. loc 5/Kagundini/1353 is contiguous to land parcel no. 1352 belongs to Robert Kangethe and Stephen Kamau while land Parcel No. 1353 belongs to Mwaura Kimundu and Mwangi Kimundu.

The entire land belonged to Kimundu Nguku before Land demarcation and during the land demarcation he caused the three parcels to be registered in the names of his three wives respectively.

The Current owners of land parcel No. 1352 filed a dispute against the current owners of parcel no. 1353 before the Land Disputes Tribunal Kandara.

They complained that land parcel No. 1352 did not get a frontage to the main Road. They wanted that parcel Nos 1352 and 1353 to be re surveyed and realigned so that both would get a road frontage.

The Tribunal ordered that Land parcels Nos 1351, 1352, 1353 be redemarcated so that land parcels Nos 1352 and 1353 would run from top to bottom. The Tribunal also ordered that land parcel no. 1351 be located at the right corner.

The Award was filed in the Thika court as D.O. case No. 69/2000 and orders were made in terms of the Award.

The original layout of the three parcels of Land is shown in annexures "SKK 1" of the replying

affidavit of Stephen Kamau Kangethe sworn on 6.2.2002.

The layout of the three parcels of land after the award and orders of the Thika court is shown in annexures "SKK2" of the same affidavit. In the original layout only parcel nos 1351 and 1353 had a road frontage. Parcel no. 1352 had no road frontage and is located behind land parcel no. 1353.

Land parcel No 1351 is 0.3 acres. In the original layout it was it was a wide small plot.

To allow parcel no. 1352 to have a road frontage the width of both plots no. 1351 and 1353 has to be reduced making parcel no. 1351 a long narrow strip of land.

Applicant calls it a corridor, which is of no economic value By 19(1) of the Registered Land Act, the Land Registrar has power, with the agreement of every person shown by Register to be affected by the correction, to alter the Registry Map. By S. 19(2) of the Registered land Act alteration of the boundary of a parcel of land results in the cancellation of original number and giving a new parcel number. Further by S. 26(1) of the Registered Land Act

"The Registrar may on application of proprietors of contiguous parcels who are desirous of changing the layout of their parcels and with the consent in writing of all the persons in whose names any right or interested in the parcels is registered and of any cautioner cancel the registers relating to those parcels and prepare new registers in accordance with the revised layout...."

By section 3(1) of the Land Disputes Tribunal Act, 1990, the Tribunal has, inter alia, jurisdiction to deal with disputes involving the division of land and determination of boundaries to land.

The dispute filed in the Tribunal was not about the division of land. It was not a boundary dispute and the Tribunal was not being asked to determine the boundaries of the three parcels of land. The boundaries of the three parcels of land were already fixed and there was no dispute about those boundaries. What the owners of the Land Parcel no. 1352 wanted is the change of layout or configuration of the three pieces of land so that parcel no. 1352 would have a road frontage. That involved the changing of the Registry Map and assignment of new parcel numbers.

I agree that the Land Disputes Tribunal had no jurisdiction to change the layout of contiguous parcels of land. It is only the land Registrar who is given power by S. 26(1) of the Registered land Act to change the layout of contiguous parcels. He is the only one given power by s. 19(1) of the Registered Land Act to alter the Registry Map. In this case, the Tribunal and the Court acted in excess of their jurisdiction.

Secondly, the alteration of the layout of parcel no. 1351 was done without the consent of the applicant – Damaris Kanuthu Kangethe and without giving her a chance to be heard.

As section 19(1) and section 26(1) of the Registered Land Act stipulates, the layout of parcel 1351 could not be changed and the Registry Index Map could not be altered without the consent of the owner. It is conceded that Damaris was not a party to the dispute in the Tribunal and has never been heard on the issue. This was both contrary to rules of natural justice and in breach of section 26(1) and Section 19(1) of the Registered Land Act.

The applicant has established a case for grant of order of certiorari.

Consequently, I allow the Amended Notice of motion and grant an order of certiorari in terms of prayer (1) of the application with costs to be paid by Stephen Kamau Kangethe, Roberts Kangethe Kimunda and Stephen Kamau Kimundu

E. M. Githinji

Judge

29.10.2002

Mr. Mundia present

Mr. Staphen kamau Kangethe, Mwaura Kimundu and Mwangi Kimundu present

Robert Kangethe and Stephen Kamau absent