

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MISC MISC APPLICATION NO. 56 OF 2000

NJOROGE KAMAU.....APPLICANT

VERSUS

THE CHAIRMAN LARI DIVISION

LAND DISPUTE TRIBUNAL.....RESPONDENT

RULING

By the Amended application dated 27.10.2000, applicant prays for an order of certiorari to quash the proceedings of Lari Division Land disputes Tribunal together with the Award dated 17.12.99 in respect of Land Title No. Gatamaiyu/Kamuchege/561.

The Tribunal gave 1 ½ acres of the land in dispute to Ngoro Ndugo Gathuku (3rd Respondent) and 1 acre to the Applicant.

The claim by Ngoro Ndugo Gathuku was essentially a claim based on resulting trust. She claimed that she contributed shs 500/= to purchase the Land from Andrew Kariuki (deceased) while applicant also contributed. She claimed half share of the land from the applicant.

It was not in dispute that the land in dispute title No. Gatamaiyu Kimuchege/561 was in fact bought from Andrew Kariuki. And it was not in dispute that the applicant Njoroje Kamau was the registered proprietor at the time the dispute was filed in the Tribunal. The facts in the statements, which are not disputed, show that the land was bought from Andrew Kariuki. And it was not in dispute that the applicant Njoroje Kamau was the registered proprietor at the time the dispute was filed in the Tribunal.

The facts in the statements which are also not disputed, show that the land was bought from Andrew Kariuki in 1967/1968; that Andrew Kariuki died in about 1968; that applicant took possession of the land; that applicant filed Residents Magistrates Kiambu Civil case No. 126/72 against personal representatives of Andrew Kariuki to claim the land and that applicant got the land through the suit. The letter dated 15.4.98 from the advocates of Ngoro Ndugo Gathuku show that she first claimed the land from applicant in 1998. Now, section 13(3) of the Land Disputes Tribunals Act, Act No. 18 of 1990 provides:

“For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to limitation of actions or to any proceedings which has been heard and determined by court”

Firstly, section 3(1) of the Land Disputes Tribunals Act does not give the Tribunal jurisdiction to deal with disputes involving a claim to land through resulting trusts.

Secondly, the claim to land through resulting trust arising over 30 years before the claim was made is time barred by section 7 of the limitation of Actions Act.

Thirdly, the Tribunal had no jurisdiction in this dispute since the court had already awarded the whole land exclusively to the applicant.

For those reasons, the Award was made without jurisdiction and is a nullity in law.

Consequently, I allow the application with costs and give an order of certiorari in terms of prayer 1 of the Amended application dated 27.10.2000 and filed on 30.10.2000

E. M. GITHINJI
JUDGE
27.11.2002

Mr. Kisebu holding brief for Mr. Kingara present