REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
CIVIL APPEAL NO. 486 OF 2001

JACOB MWANTO WANGURA ……APPELLANT

VERSUS

GIDEON MERISHO WANGURA ……..RESPONDENT

J U D G M E N T

This appeal is against the decision of the Rift Valley Provincial Land Disputes Appeals Committee wherein that committee dismissed the appellants appeal from the decision of the Kajiado Divisional Land Disputes Tribunal.

The respondent had, in the year 2000, lodged a complaint to Kajiado Divisional Land Disputes Tribunal over what he considered to be a boundary dispute against the appellant saying the dispute had persisted since 1996.

According to him, his father Kiroro owned parcel number Ngong/Ngong/1234 which he subdivided into three portions, namely Ngong/Ngong/2137, 2138 and 2139 in 1973.

That plot number 2139 was transferred to the respondent's uncle, the appellant herein, No. 2138 to another uncle Raphael while the respondent's father himself retained No.2137. That the appellant's parcel was 4 acres.

That in the same year the appellant bought another 2 acres from one John Roimen which was given number Ngong/Ngong/2141 which he combined with No.2139 to make 6 acres.

The respondent complained that it was after this that the appellant started alleging that a portion of his land had been included in the respondent's shamba, then this dispute started.

That attempts to have the dispute resolved by the area chief, the Land Registrar and the Director of Surveys were not successful and this is why he lodged a complaint with the Divisional Land Tribunal.

The appellant told the tribunal that it was true parcel number 2139 was given to him and also that he bought 2 acres from Roimen. However, he denied he combined the 2 acres land with No.2139 to form land number 2151.

That this dispute started when his brother, Kiroro – father of the respondent wanted to fence off his land but that when he called the appellant and his brothers to show them where the fence should pass, they refused and reported the matter to the area chief.

That it was when the chief visited the land that the appellant discovered that his two parcels of land – No. 2139 and 2141 were not on the map and that instead he had only one parcel of land No.2151.

That then he realized the intention of combining his parcel Nos.2139 and 2141 into No. 2151 by whoever did it, was to steal part of his parcel No.2141. www.kenyalawreports.or.ke 4

The appellant stated that his complaint to the Land Registrar to have this problem resolved did not yield the desired result because even after the map was amended and the appellant wanted the beacons to be replaced, the respondent started cultivating the disputed land and refused the surveyor to replace the beacons where they had been before the dispute arose.

A ruling of the Divisional Tribunal was delivered on 2nd February 2001 in which it declared that the land in dispute *"should be in possession of the plaintiff immediately after the confirmation of this award* ." Then it directed amendment of various office records at the survey and Land Registrar's office.

When the appellant appealed to the Provincial Land Disputes Appeal's Committee the decision of the Divisional Tribunal was upheld, hence this appeal filed herein on 3rd September, 2001. There were six (6) grounds of appeal.

The appeal was heard by this court on 22nd October 2002 when counsel for the parties appeared and submitted either for or against the same.

Counsel for the appellant (Mr. Githuka) complained that the Tribunal Committee had no jurisdiction to determine issue of beneficial ownership of a portion of the suit land.

That the respondent had no locus standi in this matter as he laid a claim on parcel of land No. Ngong/Ngong/2137 whose proprietor had died and he himself had not obtained letters of administration to act as legal representation of the deceased estate.

According to counsel, the claim had no basis because the respondent had no interest in the dispute.

Counsel submitted further that the tribunal had no power to grant the order of possession or ownership of the portion of the land in dispute and that the order infringed on the rights of the registered proprietor.

That it was wrong for the tribunal to order the amendment of survey map or the Registrar's records and that there was nothing for the appeal's committee to uphold since the Divisional Tribunal had no power to deal with the dispute. Counsel prayed that this appeal be allowed and the decisions of the divisional and appeal's tribunals set aside with costs.

Counsel for the respondent opposed the appeal and said the divisional tribunal and appeal's committee had the requisite jurisdiction to entertain this dispute and the awards made were legal and binding.

She stated that the claimant was not required under the Act to obtain Letters of Administration to institute his claim.

That in any event, the claimant had obtained limited grant for the purpose of prosecuting his claim.

That the respondent was forced, to file the suit due to the appellant's continued harassment of the family after their brother, who was administrator of this family estate had died.

She stated that the proceedings of the divisional tribunal and provincial appeals committee were in order. She prayed that this appeal be dismissed with costs.

At first this judgment could not be written because the proceedings of the Kajiado Divisional Land Disputes Tribunal could not be traced on the record and counsel for the parties had to be asked to provide the copies which they did on 18th November, 2002.

Even them, handwritten notes were could not be availed and the court had to contend with only typed

copies.

That aside, the evidence was that the piece of land out of which other parcels in dispute were curved out was Ngong/Ngong/1234 which he subdivided into Ngong/Ngong/2139 (4 acres), 2138 (6 acres) 2137 (6 acres).

Parcel No. 2139 was transferred to the appellant and No.2138 to one Raphael. These two parties are uncles to the respondent.

Apparently the respondent's father, Kiroro, remained as the registered proprietor of Ngong/Ngong/2137.

The appellant is said to have combined his parcel No. 2139 with another 2 acre piece of land he bought from Roimen (No. 2141) to give rise to parcel number 2151.

The appellant denies this and says whoever caused the combination of his two parcels of land number 2139 and 2141 had the intention of encroaching on a small portion thereof thus to deprive him of that portion.

The respondent must have been forced to come to the Divisional Land Disputes Tribunal to complain about the appellants' claim over a portion of Ngong/Ngong/2137 which according to the survey map bordered No. Ngong/Ngong/2139 or 2151 as the case may be.

And though counsel for the appellant alleged that the respondent had no locus standi in the dispute because land number 2137 was still registered in the name of his father Kiroro; he insists he had such locus standi by virtue of limited letters of administration for the purposes of instituting the suit subject to this appeal obtained in High Court Probate and Administration Cause No. 816 of 2001 (see GMW 1) dated 9th May 2001.

However, perusing through the record, it is apparent that the Land Disputes Tribunal Case at Kajiado was filed somewhere in November or December 2000 and this is why it was heard on 19th December, 2000, hence the limited letters of administration obtained from the court on 9th May 2001 was about 6 months after the case started and since such letters of administration were not retrospective, they could not grant the respondent the requisite locus standi to institute the complaint at the Divisional Tribunal in Kajiado.

Counsel for the respondent submitted on this appeal that her client was not required under the Land Disputes Tribunal Act to obtain letters of administration in order to institute the complaint.

I do not think she was right in saying so. The tribunal is a quasi judicial body and is or must be governed by the general rules of Civil Procedure which include the capacity to sue.

If this, be the position the respondent had no capacity to sue the appellant because at the time he instituted the complaint at the tribunal, he was not the proprietor of land parcel number 2137 and had no locus standi to sue on it.

Moreover, though the respondent believed he was complaining over a common boundary between land No. 2137 and 2139 which would come within the jurisdiction of the Divisional Land Tribunal, see Section 3 of the Land Disputes Act, what emerged at the end of it all was the tribunals deliberation and decision over the ownership and title to land.

This is clear from the Kajiado Divisional Land Disputes Tribunal ruling that:-

> *"The land in dispute should be in possession of the plaintiff immediately after the confirmation of this award. The District Surveyor to visit the ground and amend his maps to conform with the gro und. The District Surveyor to make sure that the R.I.M. of the same plot*

is amended by the Director of Surveys according. The District Land Registrar to amend his Registers accordingly."

and so one and so forth.

This is the decision the Provincial Land Disputes Appeal's committee purported to uphold.

But the Kajiado Divisional Tribunal had no powers to make all these orders or directions, and it breached Section 27(a) and 143 of the Registered Land Act.

It had no powers to order what charges or fees to be paid to which government department and/or for what purposes.

This is one appeal where this court has no alternative but to allow it and order each party to bear his costs in view of the parties close relationship.

Delivered this 26th day of November 2002.

D.K.S. AGANYANYA

JUDGE