

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MISC. APP. NO. 39 OF 2000

ESTHER NJOKI KINUTHIA.....PLAINTIFF

-VERSUS

THE CHAIRMAN, GATANGA LAND DISPUTE TRIBUNAL.....1ST DEFENDANT

THE SENIOR RESIDENT MAGISTRATE, THIKA.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

The background to this application is that the applicant's husband Philip Kinuthia (now Deceased) agreed to sell to his brother Waweru Karuma (who is also deceased) a piece of land L.R. No. Location 16/Mbugiti/236 at Shs.16 ,000/- per acre. The purchaser paid some of the purchase price over a period but did not complete. When he died the purchaser's wife sought to have the land transferred to her but the vendors stand was that he could only transfer a portion equivalent to the money paid. The matter was referred to Elders for arbitration. The Panel of Elders awarded 9 acres to the purchaser's wife. The total amount paid to the vendor was Shs.71,800/- which the vendor's wife sought to return to the Purchaser's wife. The vendor had died by this time. The dispute was referred to Gatanga land Dispute Tribunal on 13th May, 1999 claiming 3 acres. The Tribunal gave its award giving 3 acres to the Purchasers wife. The Resident Magistrate Thika implemented the award. The vendors wife filed the present application asking for an order of Certiori to quash the decision of the Gatanga Land Dispute Tribunal. There is no dispute that the Gatanga Land Dispute Tribunal heard the dispute and gave an award which when taken to the Resident Magistrate Kiambu on 6th September, 1999 issued a decree on 8th September, 1999.

The first issue to be determined is whether the Tribunal had jurisdiction to hear and determine the issue as it did. The applicant's contention is that the Tribunal did not have jurisdiction as the Tribunal is not supposed to deal with Land matters which are outside the armbits of Customary law. The Respondent stand is that the Tribunal has jurisdiction as what was in issue was how much land was to be given to the Respondent. The Tribunal derives its jurisdiction from Section 3 (1) of the Land Disputes Act which provides in the relevant part, "that subject to this Act, all cases of Civil Nature involving a dispute as to:

(a) Subdivision of or the determination of boundaries of land, including land held in common....."

Section 159 of the Registered Land Act provides: "

Civil suits and proceedings relating to the title to or the possession of Land to the title to a lease or charge registered under this Act or any interest in the land or charge, lease or charge, being an interest which is registered or registrable under this Act or to any interest in the land, lease or charge, being an interest which is registered or registrable under this Act, or which is expressed by this Act not to require registration shall be tried by the High Court and where the value of the subject matter in dispute does not exceed twenty five thousand pounds by the Resident Magistrates Court or the dispute comes within the provisions of Section 3(1) of the Land Disputes Tribunals Act, in accordance with the Act".

The land in dispute comes under the RLA Chapter 300 Laws of Kenya and it relates to interest in the Land being an interest which is registrable under this Act. The dispute is not confined to sub-division of the land or determination of the boundaries. It relates tot he issue as to whether there was a sale of the portion of the land. The sale of the portion of land is disputed and there is also the question as to whether the purchaser had complied with the terms of the agreement. As it is now, it is a question of determining

whether there was a breach of the contract or not. This consideration falls under Section 159 of the Registered Land Act. These two Sections read together takes the matter out of the jurisdiction of the Tribunal. An examination of the award given by the Tribunal show that the award was not in conformity with the provisions of Section 3 (8) of the Act which demands that the award shall contain reasons, for the decision. A summary of the issues and determination and shall be dated and signed by all the members of the Tribunal.

The award does not give any reasons for its decision and it is undated. Failure to comply with this Section is sufficient to warrant the interference by the Court. I would allow the application on this ground as well. The application had been opposed on the ground that it was bad in law as it did not comply with the provisions of Order 53 of the Civil Procedure Rules which it made on.

The statement of facts filed under the "Grounds Upon which the Relief is sought" although not specifically mentioning the reliefs, it comes out clearly what reliefs are sought. I therefore find that this ground is not available for the respondent to have the application dismissed.

The application is allowed. The award of the Gatanga Land Dispute Tribunal and the Order by the Senior Resident Magistrate, Thika are quashed. Costs shall be in course.

Dated and delivered at Nairobi this 8th day of June, 2000.

KASANGA MULWA

JUDGE