



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
IN THE HIGH COURT AT NYERI
HIGH COURT CIVIL APPEAL NO. 99 OF 2001

MARY WAIRIMU MURAYA.....PLAINTIFF

VS

NGARI MURAYADEFENDANT

JUDGMENT

Mary Wairimu Muraya (*hereinafter referred to as the appellant*) lodged her claim before the Kiamba land Disputes Tribunal pursuant to the provisions of the Land Disputes Tribunal Act No. 18 of 1990 against her step-brother Ngari Muraya (*hereinafter referred to as the Respondent*). Her claim was that KIAMBA THIMBIGUA/563 hereinafter referred to as the suit land formerly belonged to their father who had two wives namely **Njoki** and **Wanjiru**. The respondents mother (Njoki) was the first wife whilst the appellants mother (Wanjiru) was the second wife. The respondent made an application to the Land Control Board and was given consent to subdivide the land. He subdivided the land and gave the whole land to his mothers house and left out the appellant's mother's house. The land as it stands today is divided into 5 portions thus KIAMBA THIMBIGUA/1793, 1794, 1795, 1796 AND 1797 and is shared by the respondent's family only.

The respondent, admitted that the appellant was his step sister but added that their greater family had three houses Ngatho, Muraya, and Kinuthia who were the owners of the land. These people sat and called all their children and subdivided the land into 3 portions. The respondent's mother with their father were given land but they started selling the land until they remained with 6.97 acres. Their father attempted to sell the land in dispute but the respondent refunded the buyer the money hence the land became his and his brother's.

Having heard the appellant and her witnesses and the respondent and his witnesses, the Tribunal found that according to the green card the land belongs to Wainaina Kamau who is the appellant's and respondent's father hence the title deeds were obtained mysteriously.

After listening to the evidence and statement the Tribunal held that KIAMBAA/THIMBIGUA/563 (then 1793, 1794, 1795, 1796 and 1797 be subdivided into two equal portions as per 2 homesteads (ithaku- Njoki and Wanjiru). The Kiambu District land registrar was directed to effect the ruling, and two titles deeds issued in the name of Ngari Muraya as trustee to Njoki's homestead (Githaku) the other one in the name of Mary Wairimu Muraya as trustee of Wanjiru's

homestead (Githaku)

The respondent appealed to the Provincial Land Dispute Appeals Committee Central Province who held that the Kiambu District Land Disputes Tribunal erred in law to give an award in respect of a non-existent land parcel hence the award is null and void.

The appellant was dissatisfied with the decision of the Appeals' Committee hence appealed to this court on the following grounds namely:

1. ***That the Provincial Land Disputes Appeals' Committee erred in law in not taking into account that the Land Disputes Tribunal in its decision dated 4th December, 2000 was quite aware that Land Parcel No. KIAMBAA/THIMBIGUA/563 had been subdivided into land parcels Nos. KIAMBAA/THIMBIGUA/1793, 1794, 1795, 1796 and 1797.***
2. ***That the Provincial Land Disputes Appeals' Committee erred in law in holding that the decision of the Land Disputes Tribunal dated 4th December, 2000 was null and void.***
3. ***That the Provincial Land Disputes Appeal's Committee erred in law in not taking into account that the Land Disputes Tribunal decision dated 4th December, 2000 was to divide into two equal parts between the two houses of each and all Land Parcels Nos. KIAMBAA/THIMBIGUA/1793, 1794, 1795, 1796 and 1797.***

He prays that the Appeal be allowed and that the decision of the Provincial Land Disputes Appeals' Committee be set aside and lastly that the decision of the Land Disputes Tribunal be reinstated.

The appellant submits that the Tribunal determined the issue of customary trust over the suit land. The Tribunal identified the beneficiaries in accordance with Kikuyu Customary Law which recognizes entitlement to clan land according to "Ithaku" the respective homesteads and that the trust recognized operated on land L.R. NO. KIAMBAA/THIMBIGUA/563. The Kiambaa Land Disputes Tribunal was aware that the suit land had been subdivided and new numbers issued. The appellant argues that such subdivision did not extinguish the trust as the same subsists over the resultant title on the same terms.

The appellant argues further that section 3 (1) (a) of Act No 18 of 1990 (repealed) gives the Tribunal Jurisdiction to determine question of subdivision of KIAMBAA/THIMBIGUA/563 land, including land held in common she argues that land subject to customary trust in land held in common as envisaged under the provision. He therefore concludes his submission by contending that the Land Disputes Tribunal recorded a valid award.

The respondent on the other hand submits that even the Land Disputes Tribunal that recorded a decision in this matter had no jurisdiction to hear and determine the dispute between the appellant and Respondent as the dispute revolved on title to the land. The respondent relied on the decision of **WAMALWA WEKESA VS PATRICK MUCHWENGE, CIVIL APPEAL NO. 107 OF 1985 AT KISUMU.**

Moreover the respondent argues that the Tribunal Adjudicated on a non-existent parcel of land which parcel had been subdivided and distributed in the lifetime of the father of the appellant and respondent and therefore the appellant has no right in respect of KIAMBAA/THIMBIGUA/1796 a resultant parcel from the subdivision of KIAMBAA/THIMBIGUA/563.

This court has considered the application and the filed submissions and do find the following issues for determination.

1. Did the Land Dispute Tribunal Kiambaa have jurisdiction to entertain the dispute.
2. Was the decision of the Land Dispute Tribunal a nullity as held by the Appeals' Committee.

The issue of jurisdiction is paramount and before the court dwells into the other issues, should be determined first. *Section 3 of the Land Disputes Tribunal Act no 18 of 1990 (repealed)* provided that the Land Dispute Tribunal was to hear and determine disputes as to the division of, or the determination of

boundaries to land, including land held in common; a claim to occupy or work land; or trespass to land. There was no dispute before the tribunal on division of land as the land was already registered in the respondent's name as an absolute proprietor , however the dispute is on subdivision .

In the case of ***Jotham Amunavi -v- The Chairman Sabatia Land Disputes Tribunal and another Civil Appeal no 256 of 2002*** , the Court of Appeal observed that if the implementation of the decision of the tribunal entails the subdivision of the suit land into two parcels opening a register in respect of each subdivision and thereafter the transfer of half acre, it is clear that the proceedings before the tribunal related to both title to land and the beneficial interest in the suit land and such a dispute is not within the provisions of section 3(1) of the Land Disputes Tribunal Act.

The decision of the Kiambaa Land dispute Tribunal entailed the subdivision of already subdivided land. The Tribunal did not have jurisdiction to make such order and therefore acted beyond its jurisdiction in making an order for the subdivision of the land in issue.. Moreover, the said decision was ambiguous and therefore a nullity as it did not specify which parcel of land was to be subdivided as Kiambaa/Thimbigua/563 had been extinguished.

The submissions of the appellant fly in the face of ***Jotham Amunavii vs The Chairman Sabatia Land Dispute Tribunal and another Civil Appeal No. 256 of 2002*** and therefore the same are rejected. I uphold the decision of the Central Province Appeals' Committee that the decision of the Kiambu District Land Disputes Tribunal was a nullity as it involved the subdivision of non existent land.

The upshot of the above is that the appeal is dismissed with no order as to costs.

SIGNED AND DATED AT ELDORET THISDAY OF..... 2015

ANTONY OMBWAYO

JUDGE

DELIVERED AND SIGNED AT NYERI THIS 4TH DAY OF FEBRUARY,2015

LUCY WAITHAKA

JUDGE