



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CIVIL APPEAL NO 114 OF 2011

STANLEY KARUNTIMI M'MWAMBA
.....APPELLANT

VERSUS

KENNETH GITONGA M'RINGERA.....RESPONDENT

J U D G M E N T

(Being an Appeal from the Decision and Award of the Eastern Province Land Disputes Appeals Committee dated and delivered on the 12th day of July 2011 in Appeals Committee Case No. 118 of 2009 (KENNETH GITONGA M'RINGERA VS STANLEY KARUNTIMI M'MWAMBIA)).

The Memorandum of Appeal in this appeal reads as follows:-

“The Appellant, being greatly aggrieved by the decision and award of the Eastern Province Land Disputes Appeal Committee dated and delivered on 12th day of July, 2011 at Embu in Committee Appeal No. 118/2009 appeals to this Honourable Court and sets out herebelow his grounds of appeal;

1. *The Appeals Committee erred in Law and exceed its Jurisdiction in ordering that the Respondent was entitled to Half (½) share of the Appellants land parcel No. ABOTHUGUCHI/KATHERI/2150 yet it was deciding on an appeal against a decision of the Meru Central Land Disputes Tribunal Case No 39/2009 which case related to trespass to land where the Appellant herein was the Claimant and the Respondent in which case the Meru Central Land Disputes Tribunal ordered the Respondent to vacate the Appellant's land parcel No. ABOTHUGUCHI/KATHERI/2150.*
2. *The Appeals Committee was inconsistent and failed to take cognisance of the fact that in its Appeal Case No. 124 of 2008 (KENNETH GITONGA M'RINGERA VS. M'MARETE M'MWAMBA AND OTHERS) between the same parties and wherein the self-same Appellant had appealed in matters praying for a share of the same land, it had held that it had no jurisdiction to entertain matters related to ownership over titled land.*
3. *The Appeals Committee decision was made without jurisdiction and had the effect of taking away by way of transfer the half of the Appellant's titled land.*
4. *The Appeals Committee decision is against the law and re-judicata.*

REASONS:- Wherefore the Appellant prays for:-

- a) **The setting aside of the Appeal Committee's Decision and Award dated 12:07:2011 in Eastern Province Appeals Committee Case No 118 of 2009.**
- b) **An order that the Respondent vacates the Appellant's land Parcel NO. ABOTHUGUCHI/KATHERI/2150 as ordered by the Meru Central District Tribunal Case No. 39 of 2009 (CM TR. C 57 of 2009 and in default to be forcefully evicted with the Assistance of the Officer Commanding Police Station (O.C.S) Kariene Police Station.**
- c) **The Respondent bears the costs of this Appeal, the Eastern Province Appeal Committee and the Central District Tribunal.**

The Appellant's Submission give a short history as follows:-

1. **Stanley Karuntimi instituted suit MERU CMCC NO 228 of 1989 seeking to have the present Respondent KENNETH GITONGA M'RINGERE vacate his land and for an award of damages for the latter cutting trees on his land without authority. The matter was stood over generally to the parties to pursue the matter before the Land Disputes Tribunal.**
2. **The Appellant Stanley Karuntimi filed Civil Appeal No. 89 of 1989 in the High Court appealing against the Ruling in Civil Suit No. 228 of 1989 and the appeal was allowed and the orders of the lower Court were set aside.**
3. **In LDT 57 of 2009 the Respondent herein was the Objector/Applicant. The Objector's application to have an award of the Land Disputes Tribunal as a Judgement of the Court while an appeal was in place was dismissed.**
4. **The Appellant in Meru Central District Land Registry Tribunal No. 39 of 2009 filed a trespass case seeking vacation Orders against KENNEDY GITONGA M'RINGERA, the Respondent herein. The Respondent was ordered to stop using the disputed land with immediate effect and to make arrangement to vacate the suit land. The Appeal was No 118 of 2009. This time the Provincial Land Disputes Appeals Committee ruled in his favour and awarded half of the Appellant's Land Parcel No. ABOTHUGUCHI/2150. This decision and award spawned the present Appeal.**

The main thrust of the Appellant's Appeal is that a Tribunal, in this case the Embu Provincial Land Disputes Tribunal Committee, which had made a finding that it had no jurisdiction

5. **KENNEDY GITONGA M'RINGERA, the Respondent herein appealed to the Provincial Land Disputes Appeals Committee at Embu in Case No. 124 of 2008. The Provincial Land Disputes Appeals Committee dismissed the case citing of lack of jurisdiction.**
6. **KENNEDY GITONGA M'RINGERA, once again filed another appeal in the Provincial Land Disputes Committee which had earlier on dismissed his appeal should not later on seek to contrive Jurisdiction for itself. The Appellant also argues that Meru Central Land Disputes Tribunal case No 39 of 2009 related to trespass and not ownership of Land Parcel NO. ABOTHUGUCHI/KATHERI/2150. He opined that it was improper for the Provincial Appeals Committee to entertain new issues which constituted a complete departure from the issues canvassed in the lower tribunal. He submitted that it was trite law that an appellant is not entitled to raise new issues in an Appeal. He proffered the case of Tanganyika Farmers' Association Ltd Versus Unyamwezi Development Corporation Ltd [1968] EA 620 [CA] as his authority which buttressed this proposition.**

The Appellant also argued that Provincial Appeals Committee Case No 118/2009 was res-judicata High Court Civil Appeal No. 89 of 1992 which, he claimed, had ruled in favour of the Appellant. He proffered

two cases to support his argument on res-judicata. I opine that the two cases comprise good authorities in proper circumstances if a case had been heard and finally decided. In this case, the copy of the Judgement in High Court Civil Appeal No. 89 of

1992, is either intentionally, even mischievously or fortuitously presented in a veritably ineligible form. I find that I am unable to rule whether or not Embu Provincial Appeals Committee Case No 118 of 2009 was res-judicata High Court Civil Appeal No. 89 of 1992.

in his submissions, the Respondent says that original Land Parcel No. ABOTHUGUCHI/KATHERI/1971 measuring 1.53 Hectares was ancestral land which was to be shared equally between his late father M'RINGERA GITIKEMBE and his brother MARETE M'MWAMBA. He says that his father died in 1964. He claims that his father's brother registered the whole ancestral Land to himself and denied him his share. He claims that the land was subdivided into 2 parcels, Land Parcel Number ABOTHUGUCHI/KATHERI/2150 AND 2151. He claims that parcel No. 2151 was to be transferred to him, but instead his father's brother transferred the Land to his brother STANLEY KARUNTIMI M'MWAMBIA. From the submissions, it would appear that the Appellant KARUNTIMI M'MWAMBIA was also a brother of the Respondent's father. He also says that the Appellant transferred Parcel No 2150 to his son JAMES MURIUKI KARUNTIMI.

The Respondent claims that he has lived on the ancestral land for over Sixty years and prays that the registration of parcel NO. ABOTHUGUCHI/KATHERI/

2150 in the name of JAMES MURIUKI KARUNTIMI be cancelled and the Land be registered in his name. The Respondent did not address the Appellant's grounds of appeal.

I have carefully examined the pleadings and the submissions proffered by the parties.

Grounds of Appeal Numbers 1,2, and 3, by and large, rely on the issue of jurisdiction. As I have already said, I am unable to find that Embu Eastern Province Land Disputes Committee suit No 118 of 2009 was res-judicata High Court Civil Appeal No. 89 of 1992. **I therefore dismiss this ground of Appeal.**

Regarding Jurisdiction, I find that in Case No 124 of 2008 in a decision delivered on 24/7/2009 the Embu Provincial Land Disputes Appeals Committee found that it had no Jurisdiction to hear the appeal before it and dismissed the appeal. Having so found, the same no business to arrogate itself Jurisdiction which it had unequivocally declared that it lacked. This being the case, its subsequent decision /award was a nullity ab initio. **In the circumstances, I allow the appeal and grant the following orders:-**

- 1. I set aside the Appeals Committee's decision and award dated 12.07.2001 and which was delivered in Eastern Provincial Appeals Committee Case No 118 of 2009.**
- 2. I order that the Respondent vacates the Appellants Land Parcel No ABOTHUGUCHI/KATHERI/2150 as ordered by the Meru Central District Tribunal in case No. 39 of 2009 (CM TR. 57 of 2009) and in default, the Respondent, KENNETH GITONGA M'RINGERA, to be forcefully evicted with the assistance of the Officer Commanding Police Station (O.C.S), Kariene Police Station.**
- 3. Costs of this Appeal, in the Eastern Provincial Appeals Committee and in the Meru Central District Tribunal are awarded to the Appellant.**

It is so ordered.

Delivered in Open Court at Meru this, 2nd day of July, 2015 in the presence of

CC:

P.M. NJOROGE

JUDGE