



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT & LAND COURT
CIVIL APPEAL NO.110 OF 2011

WAHOME GITHINJI.....APPELLANT

VERSUS

JOHN WAWERU GITHINJI.....RESPONDENT

J U D G M E N T

Wahome Githinji, (*hereinafter referred to as the appellant*) and John Waweru Githinji (*hereinafter referred to as the respondent*) are brothers. They had a dispute over ownership of parcel of land **No.NYERI/MWEIGA/626** that was referred to the Mweiga Land Disputes Tribunal and was registered as Mweiga Civil Case No.14 of 2007.

The Tribunal found that the land in dispute is registered under the name of the respondent as plot No.Nyeri/Mweiga/626 despite the fact that the appellant and his family settled in the land in 1963. That the respondent was employed by a white settler when he was a minor and later joined school and that those who benefited from the white settler who owned the property were his employees as the respondent was only 15 years. The appellant took over the land though it was in the name of the Respondent who was a minor in 1963 and the appellant has lived in that parcel with the rest of their family to date and ordered that the land parcel **No.Nyeri/Mweiga/626** in which the appellant had lived since 1963 to be transferred to him by the respondent. The award was read on 4/3/2008 in the presence of the appellant but in the absence of the respondent.

The respondent appealed to the Appeals' Committee who understood the award of the Nyeri North Land Dispute Tribunal to have been in terms that the parcel No.Nyeri/Mweiga/626 where the appellant had lived for more than 45 years was to be transferred by the respondent to the appellant.

The **Appeals' Committee** found that the respondent was willing to share the suit land with the appellant and had agreed to give appellant $\frac{3}{4}$ of an acre to the suit land and therefore set aside the decision of the Nyeri North Land Disputes Tribunal and ordered that the land be subdivided into two parcels and the respondent was to get $2\frac{1}{4}$ acres whilst the appellant was to get $\frac{3}{4}$ acres.

The appellant was not satisfied with the decision of the appeals committee and preferred this appeal to this court on grounds that the appeals committee erred in law in not appreciating that the appellant who is a brother to the respondent had occupied and used the suit land since 1963 though it was registered in the name of the respondent.

Moreover that in subdividing the land in accordance with the wish of the respondent, the Appeals' Committee erred as it amounted to unlawfully taking away the appellants entitlement.

In his written submissions, Mr. Kiminda argues that the appellant has occupied the parcel of land since 1963 and therefore registration of the respondent as the proprietor was a fraud.

The appeal before court is from the Appeals Committee. The respondent did not cross Appeal. This court can only entertain an appeal from the Appeals Committee on a point of law. This court does not find any such point of law raised in the memorandum of appeal by the appellant as the issue of the appellant having stayed in that parcel of land from 1963 to date is an issue of fact, however in the respondent's submissions the issue of jurisdiction is raised.

This court finds that the issue of jurisdiction can be raised at any time before the conclusion of proceedings. The question is whether both the Nyeri North Land Disputes Tribunal and the Central Province Appeals Committee had jurisdiction to entertain the matter. The court should look at the claim that was filed by the appellant at the Land Disputes Tribunal and the appeal that was filed by the respondent at the Central Province Appeals Committee. These two documents are missing from the record of appeal as the parties have not disclosed to court the documents filed before the tribunal and the appeals' committee.

The second question is that if the two bodies had jurisdiction to determine the dispute did they stray in their decision? The second question can be answered by the court as the decisions of the two bodies are on record.

Section 3 of the Land Disputes Tribunal Act No. 18 of 1990 (repealed) limited the jurisdiction of the Tribunals to all cases of a civil nature involving a dispute as to the division of, or determination of boundary, a claim to occupy or work land or trespass to land.

From the foregoing, the Nyeri North Land Disputes Tribunal did not have the powers to order that the parcel of land be registered in the name of the appellant as doing so was going beyond its mandate as section 3(1) of the Land Disputes Tribunal Act no 18 of 1990 does not give the Tribunal such mandate hence the decision was ultra vires the provisions of the Land Disputes Tribunal Act No. 18 of 1990 (repealed).

The Central Province Appeals' Committee appears to have understood its mandate in subdividing the disputed land. However, the appellant having claimed to have occupied the parcel of land for more than 12 years, the respondents claim could not be entertained as the same was time barred.

The decision of the Tribunal is quashed for being ultra vires having been made outside the mandate donated by Section 3 of the Land Disputes Tribunal Act No. 18 of 1990 (repealed) as the Tribunal had no mandate to alienate land and vest the same to another person.

The decision of the *Appeals' Committee* is also quashed due to the fact that the claim is based on adverse possession which is a reserve of the High Court of Kenya.

The appeal is allowed and the orders of the *Appeals' Committee* are hereby substituted with an order that the appellant has a right to occupy and work on the land until the issue of **Adverse Possession** is addressed in the right forum. There will be no orders as to costs.

Dated, signed and delivered on 9th day of May 2014.

A. OMBWAYO

JUDGE