

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

ENVIRONMENT & LAND COURT

CIVIL APPEAL NO.95 'A' OF 2012

PETER KIMANI JACKSON MIGWI.....APPELLANT

VERSUS

GRACE NYAMBURA MIGWI.....RESPONDENT

J U D G M E N T

The respondent, Grace Nyambura Migwi is a sister to the appellant Peter Kimani Jackson Migwi. She moved to Kahuro Land Disputes Tribunal in claim No.4 of 2008 in respect of land No.LOC.10/KAHUTI/508. She got married in 1954 and returned to her parents in 1959 and lived with her mother until her mothers death in 1993. Before the Tribunal, she claimed a share of her father's land from her brother. She produced a certificate of search before the Tribunal which showed that the land was registered under Wangari Jackson Migwi in 1966 and transferred to the appellant on 28/12/1981 and a certificate of title issued on 30/12/1981 without her knowledge. She claimed for land within the suit land where she could build a house of her own.

The appellant on his part stated that the claimant was married at Kiruri in 1966 by Chege Kirundi. The suitland was transferred to the appellant by his mother when both the appellant and respondent were staying together but she never complained.

After hearing the parties the Tribunal ordered that the appellant herein to set aside 0.7 of an acre for Grace Nyambura Migwi in order to build a house and a place to till because she was living in Kahuti shopping centre as a squatter on rental house. The judgment was read to both parties and they were informed of the right to appeal.

The appellant appealed to the Central Province Appeals Committee which held that the land had a title deed and therefore the tribunal had no jurisdiction over land with a title deed. This decision was delivered on 27/10/2010.

Curiously the award of the Kahuro Land Disputes Tribunal was adopted by the court on 28/1/2011 despite the Appeals Committee finding that the Tribunal lacked jurisdiction over land with a title deed. The appellant has appealed to this court on grounds that the learned trial magistrate erred in law in failing to enter judgment in terms of the award by the Provincial Land Disputes Appeals Committee.

This court finds that the matter is straight forward and will not belabor on the same, though riddled with errors such as the Honourable Magistrate in the subordinate court entering judgment in terms of the decision of the Land Disputes Tribunal when the Appeals Committee committee had found that the tribunal lacked jurisdiction. The Appeals Committee properly held that the Tribunal lacked jurisdiction to entertain the dispute and therefore there was nothing to be adopted by the court.

This court finds that the magistrate erred in law in entering judgment in terms of award by the Kahuro Land Disputes Tribunal despite the Central Province Land Disputes Appeals Committee holding that the Tribunal lacked Jurisdiction.

Though the applicant ought to have moved the court by way of judicial review this court finds that this is one of the situations envisaged by Article 159 of the Constitution of Kenya and sets aside the

judgment entered in Murang'a Land Disputes Tribunal Case No.10 of 2009 *ex debito justitiae*.

Judgment is hereby entered in terms of the Provincial Land Disputes Appeals Committee decision that the Tribunal has no jurisdiction over land with a title and therefore there is no award to adopted. There will be no order as to costs.

Dated, signed and delivered on 4th day of July 2014.

A. OMBWAYO

JUDGE