



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
LAND & ENVIRONMENT COURT
CIVIL APPEAL NO.70 OF 2008

RAHAB NJERI NJUGUNA.....APPELLANT

VERSUS

JAMES KARANJA MUCHINJU.....RESPONDENT

J U D G M E N T

The genesis of this matter is Land Dispute Tribunal case number LND/6/20/6/2005 at Kiambu between James Karanja Muchinju as the claimant (*hereinafter referred to as the Respondent*) and Rahab Njeri Njuguna the objector (*hereinafter referred to as the Appellant*) in respect of parcel of land No.Gatamaiyu/Kagaa/671(*hereinafter referred to as the suitland*).

In the Tribunal, the respondent sued the Appellant for denying him possession and ownership of Land Reference Number Gatamaiyu/Kagaa/671 which was supposed to be his as per the wish of his uncle (*The appellant's husband*) the late Njeru Karanja.

According to the respondent, prior to the death of Njeru Karanja, thus between 1960 – 1980, the latter used to stay with the respondent and brought him up as his son as he was not married and had no children. Mr. Njeru Karanja died intestate but was entitled to a portion of his father's land No.Gatamaiyu/Kagaa 216.

This parcel of land was subdivided into five portions of land and each of the sons was to get a portion. The five sons of Karanja were Muchinju Karanja, David Njuguna Karanja, Benson Ibere Karanja, Zacharia Kimani Karanja and Neru Karanja. The land was entrusted to David Njuguna Karanja, and that Njeru Karanja's portion was to be given to respondent but the same was not done. The will of Njeru Njuguna indicating that all of his properties were to be bequeathed to the respondent was ignored. Njeru Karanja's portion was transferred to Rahab Njeri Njuguna through succession. The respondent claimed the land that had been transferred to Rahab Njeri Njuguna.

The appellant objected to the respondent's claim and stated that her husband David Njuguna was entrusted with the land by his father on behalf of the rest of his brothers. After distribution, he was left with his share and his late brother's share. Her husband passed on and she filed a succession cause thus transferring the land to herself in 2002.

When the matter came up for hearing before the Tribunal, the respondent called four witnesses whilst the appellant called one. The gist of the respondent's witnesses' testimonies was that the LR No.Gatamaiyu/Kagaa/216 was sub-divided in five portions. One of the portions *being the suitland* was meant for Njeru Karanja (deceased) who had indicated that his portion was to be given to the respondent.

On the other hand, the appellant's witness testimony was that the disputed portion was to be inherited by the appellant's husband.

After listening to the parties and their witnesses and considering the testimony and documents submitted by parties, the Tribunal decided to award the undeveloped and unoccupied parcel of land Ref. **No.Gatamaiyu/Kagaa/670** which was allegedly supposed to be the portion of Njeru Karanja to James Karanja Muchinju. The Land Registrar was ordered to effect the said transfer immediately.

The appellant herein appealed to the Central Provincial Land Appeals Committee in appeal No.12 of 2005. The Appeals Committee upheld the decision of the Tribunal.

The appellant did not get tired and has now appealed to this court. **Section 8 (9) of the Land Disputes Tribunal Act No.18 of 1990** provides that an appeal shall lie to the High Court from the Appeals Committee **on a point of law within sixty days** from the date of the decision. The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefore to any court.

On the 27th February 2012, when the appeal was scheduled for hearing, the counsel for the appellant turned up whilst neither the respondent nor counsel attended court. Counsel argued grounds 3, 4 and 5 jointly and left out grounds 1 and 2. The **gravamen** of the appellants submissions was that the award by the appeals committee was made without jurisdiction as the land belonged to the estate of David Njuguna. A succession cause had been initiated in Senior Resident Magistrate's Court Limuru as **Succession Cause No.36/2001**. A grant was issued, confirmation done followed by distribution of the estate of the deceased and a title deed issued in favour of the appellant.

The award made by the Tribunal purported to revoke the grant and certificate of confirmation issued by the court pursuant to the provisions on the law on succession. The appellant contends that respondent ought to have gone to High Court to revoke the grant. On this basis, she seeks an order quashing and setting aside the finding and award of the Appeals Tribunal and order the eviction of the respondent therein.

Section 3 of the Land Disputes Tribunals Act No.18 of 1990 limits the jurisdiction of the Land Disputes Tribunal to

(a) The Division of or the determination of boundaries to land, including land held in common.

(b) claim to occupy or work land.

(c) Trespass to land.

(d)

I have considered the Memorandum of Appeal, the Record of Appeal including the decision of the Tribunal and Appeals Committee and do find that both **quasi judicial bodies** were grappling with a succession dispute which had been determined, a fact within their knowledge. When James Karanja Muchinju stated in his claim that he came to learn that the land which was to be Njeru's was transferred to Rahab Njeri Njuguna through succession, the Tribunal ought to have downed its tools and advised the respondent to move the court that had dealt with the succession dispute for purposes of filing an objection.

Both the Kiambu LDT and the Central Provincial Appeals' Committee erred in law in entertaining Kiambu LDT case No.LND 16/20/6/2005 and Kiambu Appeal case No.12 of 2005 respectively as they both lacked jurisdiction.

The upshot of the above is that the decision of the appeals committee is hereby quashed and set aside. The decision of the Kiambu L.D.T in case of LND/16/20/6/2005 made on 5/05/2005 is also hereby

set aside. Each party to bear its own costs. Orders accordingly.

Dated, signed and delivered at Nyeri this 6th day of June 2013.

A. OMBWAYO

JUDGE