



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
LAND & ENVIRONMENT COURT
CIVIL APPEAL NO.89 OF 2009

JULIUS MBURU MBUTHIA.....APPELLANT

VERSUS

JOHN KARIUKI KIBORO.....RESPONDENT

J U D G M E N T

The appellant, Julius Mburu Mbuthia filed a claim in the Thika Land Disputes Tribunal on the 17th of November 2005. The claim was registered with the Thika District Land Disputes Court and forwarded to Kakuzi Land Disputes Tribunal for determination on 5/10/2005.

According to the appellant, sometimes in 1989, his mother in law being a member of Kagaa Farmers Co-operative Society Limited was allocated land parcel Number **Mitubiri/Thuthua Block.1/435**. His said mother in law, Monica Muthoni Simon gave him the land parcel. He started developing the land however after one year there were changes of members in Kagaa Farmers Co-op. Society Ltd and he was moved from number 435 to 436. Plot No.435 which he had developed fully was given to Mr. Kinyungu Kiboci who sold the same to the respondent Mr. John Kariuki Kiboro. The said plot was later transferred to the respondent as the absolute proprietor.

The appellant requested the Thika District Land Disputes Tribunal to consider his case and declare him the proprietor of the land parcel No.435 on grounds that he had developed the same and had been living on the land for 15 years before the claim though he was not a member of Kagaa Farmers Co-op. Society. He claimed for damages from the respondent for having acquired title for the land the appellant had developed.

The respondent on his part stated that he was a member of Kagaa Farmers Co-op. Society Ltd and in 1989 he was allocated land parcel No.435 but instead he occupied 434 and developed the same. One year thereafter, the society made corrections on the round through its surveyor and he was moved to his right plot No.435 that was being occupied by one Monica Muthoni Simon who was moved to plot No.436 which was occupied by the appellant. The respondent opposed the claim on grounds that the appellant was not a member of Kagaa Farmers Co-op. Society and therefore not entitled to the land. He asked the Tribunal to award him damages.

After considering the evidence given by the appellant, respondent and the witnesses, the elders resolved that the appellant had no right to claim ownership of land parcel **No.Mitubiri/Thuthua/Block.1/435** because he was not known to the Kagaa Farmers Co-op. Society Ltd

which allocated the respondent the said parcel of land. The Tribunal found that the appellant did not have any document of ownership save that he had developed the land and was residing on the same having been given by his mother in law.

The Tribunal ordered the appellant to stop interfering with land parcel **No.Mitubiri/Thutua Block.1/435** and to pay costs to the respondent.

The appellant was not satisfied with the decision of the Tribunal and therefore moved to the Central Province Appeals Committee (*hereinafter referred to as the Appeals' Committee*) on grounds that the was allocated the plot by the society but the title deed was in the name of the respondent.

The Appeals' Committee heard the appeal and found that the appellant was not able to convince the court about the legality of ownership of plot No.435 as the respondent produced document as evidence that he was the owner of the plot. The appeals' committee found that the respondent was the sole owner of the plot **Mitubiri/Thuthua/Block 1/435**.

The appellant moved this court on 22nd July 2009 on appeal under the provision of section 8(9) of the Land Disputes Tribunals Act No.18 of 1990 on the following grounds.

1. **The provincial land appeals tribunal erred I failing to consider the appellants evidence thus arriving at an erroneous decision.**
2. **The Provincial Land Appeals Tribunal erred by entertaining extraneous matters from the respondent instead of relying on appellants witnesses evidence.**
3. **The Provincial Land Appeals Tribunal did not apply the law judiciously.**
4. **The Provincial Land Appeals Tribunal did not consider the possibility that the respondent herein had acquired the title to the suit property fraudulent.**

The first ground is that Provincial Land Appeals Committee failed to consider the appellants evidence thus arriving at an erroneous decision. I do find this ground baseless because the letter by the Provincial Commissioner dated 6/9/2009 copied to the District Commissioner at folio 43 of the Thika Chief Magistrate's case No.76 of 2005 is a communication to the Registrar of the Thika Courts informing him that the Appeals Tribunals heard and determined the said appeal as per the attached copy of proceedings and judgment. In the attached proceedings the appeals committee states that the appellant was not able to convince the court about the legality of ownership of plot No.435. The appellants committee found that the respondent was clear in his statement by vividly producing all his relevant documents in connection wit the suit land.

Though the appeal does not raise the issue of jurisdiction this court finds that both the Thika Land Disputes Tribunal and the Appeals' Committee lacked jurisdiction to entertain the dispute of ownership of **Mitubiri/Thuthua/Block 1/435** under the provision of Section 3 of the Land Disputes Tribunal Act No.18 of 1990. the section provides that subject to this Act, all cases of a civil nature involving a dispute as the

(a) The division of or the determination of boundary.

(b) A claim to occupy or work land or

(c) Trespass to land

shall be heard and determined by a Tribunal established under Section 4.

A perusal of the record of proceedings of the Tribunal and Appeals' Committee reveals that the issues placed before the two bodies involved the ownership of the disputed parcel of land which was

registered in the name of the respondent. It is clear from the proceedings of both the Tribunal and appeals committee that the decision was made on title to land and attempted to vest proprietary interest on the respondent.

Having found that both the Appeals' Committee, and the Land Disputes Tribunal lacked jurisdiction to determine the dispute the court nullifies both the award of the Land Disputes Tribunal and the Appeals' Committee and further finds that the parties have the liberty to file the appropriate suit either in the High Court of Kenya or the Chief Magistrate's Court. Each party will bear its own costs as the public bodies that were to understand the law did not do so and therefore causing hardship to the appellant and respondent.

Dated, signed and delivered at Nyeri this 11th day of October 2013.

A. OMBWAYO

JUDGE