



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MURANG'A

ELCA NO 13 OF 2017

DAVID KIMANI KAMAU.....1ST APPELLANT

PETER KAMAU KIMANI 2ND APPELLANT

VS

MARY MUTHONI.....1ST RESPONDENT

SIMON MUIRURI KAHINGO 2ND RESPONDENT

(Being an appeal from the ruling of Hon B. Khaemba, RM, Kigumo in LDT No 41 of 2011 delivered on 13/4/2012)

JUDGMENT

1. The Appellants being aggrieved by the decision of the Hon B Kahemba RM, proffered the following grounds of appeal;

a. That the learned magistrate erred in law and in fact by entering a judgement on what was actually a void award of the tribunal and the following grounds are raised; the award of the tribunal was null and void in law for want of jurisdiction to hear and determine a claim based on trust; the award was null and void to the extent that it purported to order the subdivision and transfer of the land registered under the repealed Registered Land Act; the award was null and void to the extent that it sought to determine matters in respect to succession and further that the award was contrary to the orders issued in the concluded succession cause.

b. The learned Magistrate erred in law and fact in basing his ruling order and judgement on a repealed piece of law.

2. The appeal is not opposed.

3. The Appellants submitted that the subject of the appeal are two land parcel No.s LOC2/KANDERENDU/1218 and LOC2/KANDERENDU/1221 registered in the names of Joseph Kahingo Kamau, deceased and Peter Kamau Kimani , the 2nd Appellant. Parcel LOC2/KANDERENDU/1218 is land held in trust for a minor who is deceased. That the tribunal did not have jurisdiction to entertain the dispute and therefore acted ultra vires its mandate as given in the now repealed Land Dispute Tribunal Act. They urged the Court to set aside the judgement as it was arrived at based on an illegality.

4. I have looked at the history of the dispute from the Land Dispute Tribunal proceedings in LDT No 17 of 2011 at Kigumo. The parties are all related in this case. The Respondents urged the elders to have parcel No LOC2/KANDERENDU/1218 be registered in the names of all the 5 children of Joseph Kahingo Kamau, deceased instead of the 2nd Appellant alone. In respect to the parcel LOC2/KANDERENDU/1221, the Respondents wanted the elders to transfer one acre therefrom to Virginia Wanjiru Kamau.

5. Upon hearing the dispute the elders delivered an award which award was adopted as an order of the Court on the 13/4/12 in the following terms;

a. That the Land Registrar to register Simon Muiruri Kahingo, John Gatei Kahingo, Jane Njeri, Peter Kamau Kahingo and Phylis Wairimu Kahingo as proprietors in common of Land Parcel LOC 2/KANDERENDU/1218 in equal shares.

b. That Peter Kamau Kimani to transfer 1 acre of land to Virginia Wanjiru Kamau ID No. 2043252 out of parcel No LOC2/KANDERENDU/1221.

c. That the Executive Officer to sign the transfer documents.

d. That no costs awarded.

6. The single issue for determination is whether the Land Dispute Tribunal had power to divest the lands in the manner in which it did. The starting point is the mandate of the Land Dispute Tribunal as set out in Section 3. Section 3 (1) of the Land Disputes Tribunals Act Cap 303A (now repealed) limited the jurisdiction of land disputes Tribunals as follows;

- a. the division of, or the determination of boundaries to land, including land held in common;
- b. a claim to occupy or work land; or
- c. trespass to land.

7. The Act did confer to the land dispute tribunal the jurisdiction to deal with boundary disputes, subdivision, claim to occupy or work on land and trespass to land. As rightly submitted by the learned counsel for the Appellants, it did not confer to it jurisdiction to determine disputes over title or ownership to land. The Court of Appeal in the case of **Jonathan Amunavi vs. The Chairman Sabatia Division Lands Dispute Tribunal & Anor, Kisumu Civil Appeal No. 256 of 2002** (unreported) observed that the Land dispute tribunal acted in excess of jurisdiction when it purported to revoke the Plaintiffs title to the suit property. It went ahead to affirm that such power was reserved for the High Court vide section 159 of the Registered Land Act, Cap 300 Laws of Kenya (now repealed).

8. The law is well settled that a decision which is arrived at without jurisdiction is a nullity. In the case of **Sir Ali Bin Salim vs. Shariff Mohamed Shatry Civil Appeal No. 29 1940** the East African Court of Appeal stated that; -

“If a Court has no jurisdiction over the subject matter of the litigation, its judgments and orders however precisely certain and technically correct are mere nullities and not only voidable; they are void and have no effect either as estoppel or otherwise and may not only be set aside at any time by the Court in which they are rendered, but be declared void by every Court in which they may be presented. It is well established law that jurisdiction cannot be conferred on a Court by consent of parties and any waiver on their part cannot make up for the lack or defect of jurisdiction”.

9. It is the finding of the Court that the Land Dispute Tribunal exceeded its jurisdiction by determining title in land. Under Section 7 of the Land Dispute Tribunal Act (now repealed) the role of the Court was to receive the award and adopt it as the judgement of the Court.

10. The upshot is that the appeal has merit. It is allowed. The orders of the Court issued on the 5/6/12 are hereby set aside and all its consequential orders thereto.

11. I make no orders as to costs.

12. It is so ordered.

DELIVERED, DATED AND SIGNED AT MURANG'A, THIS 16TH DAY OF SEPTEMBER 2019.

J.G. KEMEI

JUDGE.

Delivered in open Court in the presence of:

Kirubi for the 1st and 2nd Appellants.

1st and 2nd Respondents – Absent

Kuiyaki and Njeri, Court Assistants