



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MURANG'A

ELCA NO 4 OF 2018

STEPHEN WAMAI GATAU.....APPELLANT

VS

NELSON NJUGUNA GITAU.....1ST RESPONDENT

WAMAI NJUGUNA.....2ND RESPONDENT

JUDGMENT

1. The Appellant filed his amended Memorandum of Appeal vide leave of this Court granted on the 19/4/2018.
2. The Appellant being aggrieved by the judgement of Makuyu LDT No CMCC No DO 45 of 2010 filed an Appeal in this Court on the following grounds; That the tribunal erred in law in;
 - a. In adjudicating on a will by Mr Gitau the father of the parties herein
 - b. In ordering that the land parcel MAKUYU/MAKUYUBLOCK1/972 be divided into 3 portions.
 - c. In finding that the Appellant was registered by Pundamillia Cooperative Society as a trustee because he did not have his father's ID card as the latter was working away from home.
 - d. in acting without jurisdiction hence not in compliance with section 3 a)-c) of the Land Disputes Act (repealed).
3. On the 6/4/2010 the Land Dispute Tribunal determined the case as follows;

“ having heard the statements made by the parties the Court do therefore rule that parcel No Makuyu/Makuyu block 1 /1972 belongs to Gitau's family and therefore the named parcel should be divided among the family members i.e should be divided into three portions according to Mr Gitau's will ; the two sons and the mother”.
4. The Appellant was aggrieved by the decision of the LDT and preferred an Appeal to the Provincial Appeals Board. Upon the repeal of the LDT Act and following the practice instructions of the Chief Justice, Willy(as he then was) Mutunga Rules issued on 25/7/14. All the Appeals pending before the Provincial Land Dispute Tribunal were to be admitted into the ELC Court for hearing and determination hence the leave of the Court issued on the 19/4/2018.
5. The Appellant prays for the award of the Land Dispute Tribunal to be set aside with costs to the Appellant in this Appeal and the Land Dispute Tribunal.
6. The Appellant submitted that the Land Dispute Tribunal erred in handling the case as it did not fall within its mandate. That by ordering that the suit land parcel No MKAUYU/MAKUYU/BLOCK 1/972 be subdivided into 3 parts, the tribunal erred in handling the dispute that dealt with title in land. Further that the claim having been based on trust the tribunal had no powers to deal with it.
7. The Respondent in brief submissions stated that the land is registered in the name of the Appellant and the Land Dispute Tribunal ordered that the land be sub divided into 3 portions according to Mr Gitau's will, their father. That the parties are siblings. The 3 portions were given to the two parties and their mother. The Respondent argued that the Land Dispute Tribunal dealt with subdivision and occupation of land which is part of its mandate. The Respondent stated that the suit land is family land where parties have lived since 1976 buried their kin and kindred over the years and that the decision arrived at by the Land Dispute Tribunal was fair and just in the circumstances.

8. Where the Tribunal acted in excess of its jurisdiction, the relief available is to declare the whole proceedings and decision null and void and incapable of any force of the law.

9. Section 3(1) of the Land Dispute Tribunal Act repealed stated as follows;

“Subject to this Act, all cases of a civil nature involving a dispute as to— (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, shall be heard and determined by a Tribunal established under section”

10. The Land Dispute Tribunal found out that the land is registered in the name of the Appellant. that there was a will by Gitau their father. It is at this point that the Land Dispute Tribunal should have stopped the proceedings and referred the matter to the succession Court. The Land Dispute Tribunal dealt with title to land and by ordering that the land be subdivided into 3 parts and given to the two parties and their mother, in my view that amounts to disposition of title in land, a mandate that the Land Dispute Tribunal did not possess.

11. In the case of **The Owners of Motor Vessel “Lilians” Vs Caltex Oil Kenya Limited (1989) KLR** the Court held that

“.. jurisdiction is everything without it a Court has non power to make one more step. Where a Court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence. A Court of law down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”

12. It is trite that jurisdiction is conferred by the constitution and or legislation or both. A Court or a party cannot arrogate jurisdiction upon a Court.

13. In the upshot the Appeal has merit. It is allowed and the decision of the Land Dispute Tribunal is set aside in its entirety.

14. Costs of the Appeal shall be payable by the Respondents.

15. It is so ordered.

DATED DELIVERED & SIGNED AT MURANG'A THIS 19TH DAY OF DECEMBER 2019.

J.G. KEMEI

JUDGE.

Delivered in open Court in the presence of:

Maina HB for Mbuthia for the Appellant

Mureithi HB for Wambui Ngugi for 1st & 2nd Respondent

Irene and Njeri, Court Assistants