



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

E.L.C.A NO 143 OF 2011

GODFREY KOOME.....APPELLANT

VS

GLADYS M'ANANGA.....1ST RESPONDENT

CHARITY MUKOKIRUJA.....2ND RESPONDENT

LILIAN NKATHA.....3RD RESPONDENT

ROBERT MAITETHIA JEREMY.....4TH RESPONDENT

KIOME M'IREA.....5TH RESPONDENT

DOUGLAS KINYUA.....6TH RESPONDENT

AND

SARAH GACHERI RINTARI.....INTERESTED PARTY/APPLICANT

JUDGMENT

1. This is a second Appeal relating to the Land parcel Ntima/Ntakira/4287. The decision in respect of the suit land was first made by Meru Central Land Dispute Tribunal on 1/10/2010. The Tribunal dismissed the case at the first instance and granted the land to Appellant.
2. Being dissatisfied with the decision of the Meru Central Land Dispute Tribunal, the Appellant filed an appeal in the Eastern Province Land Dispute Appeals Tribunal. The Appeals Tribunal on 18/11/11 allowed the appeal and reverted the land to the Respondents.
3. On 18/11/11 the Chief Magistrate's Court Meru adopted the award of the Appeals tribunal.
4. The Appellant being aggrieved with the decision of the CMCC's Court filed this appeal on 13/12/11. The grounds of appeal are;
 - a) The Tribunal erred in law entertaining the dispute when it had no jurisdiction to do so.
 - b) The award is a nullity.
5. Upon perusal of the proceedings before the Meru Central Land Dispute Tribunal and the Eastern Provincial Appeals, Land Dispute Tribunal, there appears a curious matter necessary to consider before going into the merits of the appeal. In the record the appeal relates to a decision of the Provincial Appeals Tribunal where the suit land was awarded to the 1st Respondent and a M'Inanga Mirera, the 1st Respondent's husband to hold in trust for the family.
6. The 2nd-6th Respondents appeared and gave evidence at the Meru Central Lands Tribunal. There was no order made in their favour in respect to the suit land. It is, in the circumstances, unconceivable why their names appear as respondents in the Memorandum of appeal. The Court will make an appropriate order in the ultimate of this appeal in that respect.

7. The Appellant by a Notice of Motion dated 24/10/2014 sought inter alia orders leave of the Court to enjoin the Sarah Rintari as an interested party. The Interested party is a Co-Appellant. That part of the prayer by the Appellant does not appear to have been conclusively prosecuted and a decision thereon made by the Court. It is therefore not foreseeable why the name of the said Sarah Rintari has continued to appear in the record of the appeal.

8. The order appealed against was made in favour of the 1st Respondent and her husband, namely M’Inanga Mirera as stated above. Curiously in this appeal the said M’Inanga Mirera has been omitted as a Party. The Appellant has not in his submissions given any reason at all for this omission, nevertheless, such omission is not fatal to the appeal because the interest relating to the suit property are joint between the 1st Respondent and the said M’Inanga Mirera.

9. The matter for consideration by this Court in this appeal relates only to points of law. These are the proper grounds submitted by the Appellants for considerations.

10. On the 12/3/18 the Parties appeared before the Court and undertook to prosecute the appeal by written submission. The Appellant filed written submission on 14/3/18 and the Respondents filed on their written submissions on 14/5/18.

11. The Court has read and considered the proceedings in the Meru Central Land Dispute Tribunal Eastern Provincial Land Dispute Appeals Tribunal, the record of appeal and the submissions filed by both the Appellant and the Respondents.

12. The issue necessary for consideration in this appeal is whether or not the Meru Central Land Dispute Tribunal and the appeals tribunal acted in a matter for which they did not have jurisdiction. It is clear that in the proceedings before the two tribunals that the suit land is registered and Counter claims found in the evidence point to ownership of the suit land.

13. The Jurisdiction of the Land Dispute Tribunal is set out in Section 3(3) of Land Dispute Tribunal Act (now repealed). This states to:

“3. (1) 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 4.”

14. This statutory jurisdiction does not permit the tribunals to deal with matters relating to ownership of land. In the case of **Sir Ali Bin Salim –vs- Shariff Mohamed Shatry Civil Appeal No. 29 of 1940** the East African Court of Appeal stated,

“if a Court has no jurisdiction over the subject matter of the litigation its judgements 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 were rendered but be declared void by every Court in which they may be presented. It is well established in law that jurisdiction cannot be conferred on a suit by consent of parties and any waiver on their part cannot make up for the lack of defect of jurisdiction”. (emphasis is mine).

In the case of **Macfoy vs. United Africa Co. Ltd (1961) 2 ALL ER 1169 at 1172** the Court made a decision to the effect that where an act is a nullity it is trite that it is void and if an act is void, then it is in law a nullity as it is not only bad but incurably bad and there is no need for an order of the Court to set it aside, though sometimes it is convenient to have Court declare it to be so.

15. The finding in Para 13 buttressed by the appeal Courts decisions bind this Court. In the circumstances the Court finds that both the central Meru Land Dispute Tribunal & Eastern Province Appeals Tribunal dealt on matters relating to ownership of land for which they were jointly and severally not clothe with jurisdiction.

16. In view of the findings in this judgement the Court makes the following orders;

a) The appeal be and is hereby allowed.

b) The award made by the Meru Central Land Dispute Tribunal & the Provincial Land Dispute Tribunal Appeals Tribunal together with the adoption of the later award by the Chief Magistrate’s Court be and is hereby set aside.

c) The names of 2nd, 3rd, 4th 5th & 6th Respondents and together with the interested party be and are hereby struck out of the record of this appeal.

d) The 1st Respondent to pay the Appellant’s costs in the appeal.

e) The Appellant to pay the costs if any of the 2nd, 3rd, 4th, 5th & 6th Respondents together with those of interested party in this appeal.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MERU THIS 28TH DAY OF JUNE, 2018.

J G KEMEI

JUDGE.

In the presence of:

C/A Mutua

Muthamia holding brief for Mwenda Mwarania for appellant

Ms. Wambugu holding brief for B.G Kariuki for 1st to 6th Respondents