



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELC MISC NO.6 OF 2014

JULIUS GITAU GICHARU KENNEDY THIONG'O.....APPELLANTS

VERSUS

MARY NYAMBURA GITAU.....RESPONDENT

JUDGMENT

1. The respondent herein, Mary Nyambura Gitau, instituted a claim before Githunguri Land Disputes Tribunal against the appellants, Julius Gitau Gicharu and Kennedy Thiong'o, seeking an order for subdivision of the parcel of land known as **Githunguri/Lioki/554** (hereinafter referred to as "the suit property") between herself and the appellants.
2. The respondent claimed that she was entitled to 0.53 hectares and the appellants 0.51 hectares from the suit property.
3. The appellants opposed the proposed mode of sub-division of the suit property on the ground that the original owner of the land wanted them to share it equally.
4. In support of their claim, the appellants produced a document they termed a will executed by their grandfather on how he wanted his properties to be shared upon his demise. They also availed two witnesses, George Mbugua Ng'ang'a and William Thiong'o Muchai, both of whom supported their claim.
5. The claim by the respondent, was on the other hand, supported by John Ndung'u Thiong'o who described himself as a brother of the respondent's deceased husband.
6. Upon considering the respective cases of the parties and based on a site visit it had made to the suit property, the Tribunal made the following findings:-

“

(i) Land No.Githunguri/Riuki/554 is family land;

(ii) The late Andrew Gitau was son to the late Thiong'o Mburu;

(iii) Mr. Julius Gitau and Kennedy Thiong'o are the sons of the late Beatrice Karugi Thiong'o, sister to the late Andrew Gitau;

(iv) Mr. Julius Gitau and Kennedy Thiong'o are claiming their mother's share;

(v) Mary Nyambura is wife to the late Andrew Gitau;

(vi) During the land visit by us, we found that there were no boundary marks and they use the land on half-half basis I.e Julius Gitau and his brother Kennedy Thiong'o on one side and Mary Nyambura on the other side. We also found that Mr. Julius Gitau lives in a permanent house while Kennedy Thiong'o lives in a semi permanent building. Mary Nyambura uses the land but does not live there.

Ruling/Award

After the elders considered the above facts, they ruled as follows:

1. The District Surveyor to sub-divide land No.Githunguri/Riuki/554 as below

a). Mary Nyambura Gitau 0.53 ha;

b. Julius Gitau & Kennedy Thiong'o 0.51 ha. Jointly....”

7. Aggrieved by the award, the appellants appealed to the now defunct Provincial Land Disputes Appeals Tribunal on five (5) grounds which can be summarised as follows:

a. The tribunal erred by entertaining a claim it had no jurisdiction to hear and determine;

b. The tribunal erred by failing to consider their evidence on how the property ought to be shared; and

c. The tribunal erred by failing to hold that they hold the suit property in equal shares.

8. Pursuant to orders issued in the appellants' application dated 25th June, 2013 the appeal was transferred to this court for hearing and determination.

9. The appeal was disposed of by way of written submissions.

10. At the time of writing this ruling only the respondent had filed her submissions.

11. In her submissions filed on 10th May, 2015 the respondent contends that the Tribunal had jurisdiction to hear and determine the claim she preferred before it because it related to her right to occupy a portion of the suit property on allegation that the appellants had trespassed on the portion of the suit property she occupied.

12. For the foregoing reasons, she urged the court to uphold the award in order to give it finality and enable her to execute it.

Analysis and determination

13. From the evidence adduced before the Tribunal, it is clear that the dispute preferred before the Tribunal related to ownership of registered land. The Respondent wanted the Tribunal to decree that she was entitled to be registered as the proprietor of 0.53 hectares out of the suit property.

14. There being no dispute that the dispute preferred before the Tribunal related to land registered under the Registered Land Act, Cap 300 Laws of Kenya (now repealed) the sole issue for determination is whether the Tribunal had jurisdiction to hear and determine the dispute preferred before it.

15. In determining this question, I adopt the decision in the case of **Joseph Malakwen Lelei & Another V. Rift Valley Land Dispute Appeals Committee & 2 others** (2014)e KLR where it was held:

“Section 3 of the Land Dispute Tribunal Act (repealed) gives jurisdiction to Land Dispute Tribunal to handle claims in the following matters only:-... all cases of civil nature involving a dispute 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,.....evidently the above provisions does not include jurisdiction to deal with issues of determination of title or ownership of registered land.....”**

16. Also see the case of **Mateo Githua Ngurukie vs. Hon. Attorney General and 5 Others; Nyeri High Court Civil Suit No. 206 of 1999** where **Ombwayo J.**, stated:-

“Over and again the Court of Appeal and High Court have held that the Land Dispute Tribunal lacks jurisdiction over registered land especially where the matter at hand touches on title of land...”

17. Since the dispute preferred before the Tribunal could not be determined without considering and determining the rights of the parties to the suit property, which was registered land, I find and hold that the Tribunal lacked jurisdiction to hear and determine the dispute preferred before it.

18. Since a decision made without jurisdiction is null and void, I find and hold that the appeal herein has merit and allow it as prayed.

Dated, signed and delivered in open court at Nyeri this 31st day of January, 2017.

L N WAITHAKA

JUDGE

In the presence of:

Ms Mwai for the respondents

Ms Maina h/b for Mr. Gori for the applicant

Court clerk - Esther