



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MILIMANI

CIVIL APPEAL NO. 446 OF 2008

MUIRURI KAMAU.....1ST APPELLANT

PETER KAMAU MUIRURI.....2ND APPELLANT

EVAN NGUGI MUIRURI.....3RD APPELLANT

DAVID KINYANJUI MUIRURI.....4TH APPELLANT

HURUN NJEGA MUIRURI.....5TH APPELLANT

=VERSUS=

TITUS KINYANJUI KAMAU.....1ST RESPONDENT

ESTHER WANJERI NG'ANG'A.....2ND RESPONDENT

SAMUEL KAMAU NJERI.....3RD RESPONDENT

(An appeal from the decision of the Provincial Land Disputes Appeals Committee at Nyeri in Land Appeal No. 13 of 2003 dated 17th July 2008)

JUDGEMENT:

INTRODUCTION

1. The first appellant is father to the second to fifth appellants. The first Respondent is a brother to the first appellant. The second respondent is a sister in law to both the first appellant and the first Respondent. The third Respondent is a Nephew of the first appellant, the first Respondent and the second Respondent.
2. The appellants and the Respondents are relatives from the first house of *Mbute Kimangika* alias *Kamau Kimangika* who had two wives. During the process of land demarcation, the first appellant who was the eldest son from the first house was given land which was later registered as *LR No. Kiambaa/Kihara /T.479*. The eldest son from the second house also got land which was registered as *LR No. Kiambaa/Kihara/T.478*.
3. The family Patriach Kamau Kimangaika built separate house for his two wives. Each of his two wives had a house built on land held by their respective first born sons. Kamau Kimangaika who had no “*Thingihira*” could alternately visit his wives in their respective houses.

4. Each of the sons from each house including their unmarried sisters built houses according to where their mothers had settled. Sometime in the 1990's the first appellant transferred **LR No. Kiambaa/Kahara/7.479** to his son who are the second to fifth appellants. This is what prompted the Respondents to file a claim before Kiamba/Kihara land Disputes Tribunal under the provisions of the land Disputes Tribunal Act No.18 of 1990 (Now repealed).

5. After the Tribunal heard the Respondents who were claimants and the appellants who were the objectors it was ruled that the claimants who were on the land had a right to remain on the land. The appellants were dissatisfied with the Tribunal verdict and they preferred an appeal to the provincial land Disputes appeals Committees at Nyeri. The provincial Land Disputes Appeals Committee at Nyeri upheld the verdict of the Tribunal prompting the appellants to file an appeal to the High Court.

APPELLANTS' APPEAL

6. The appellants filed a memorandum of Appeal in which they raised the following grounds:-

i. Both the District Land Disputes Tribunal and the Provincial Appeals Committee had no jurisdiction to hear and determine the dispute and/or any dispute concerning land parcel no. Kiambaa/Kihara /T.479 or any registered parcel of land .

ii. The Provincial Appeals Committee contrary to facts , law and/or procedure erred in failing to carefully consider and/or take into account the grounds of appeal stated in the appeal before it and /or submissions of the parties appearing before it.

iii. The decision /finding of the Tribunal was against the weight of evidence.

ANALYSIS

7. The repealed Act came into force on 1st July 1993. Under section 3 of the Act, the Land Disputes Tribunal established under the Act had jurisdiction to determine disputes involving :-

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.

8. Under Section 8 (9) of the repealed Act either party to the appeal was at liberty to appeal from the decision of the appeals Committees to the High Court on a point of law within sixty days from the date of the decision complained of. It is clear from the three grounds on the memorandum of appeal that the appellants are appealing on both issues of fact and law. This is not allowed. The appellants were expected to raise only points of law. For purposes of the repealed Act, a question of customary law is considered a question of fact by dint of the provisions of section (10) of the repealed Act.

9. I have gone through the proceedings before the Tribunal whose decisions was appealed against. It is very clear that the claim before the Tribunal was on the right of the three Respondents to occupy or work on the land. They each gave detailed accounts on how they started working on the land; how they have been cultivating on it and how they constructed their houses on it without any permission from the first appellant. The Tribunal was therefore perfectly within its jurisdiction to determine the claim which had been laid before it.

10. The Provincial Land Disputes Appeals Committee was therefore seized with jurisdiction to hear the appeal before it and it arrived at a proper decision in not interfering with the decision of the Tribunal. The counsel for the appellants submissions were based on the Magistrates Jurisdiction (Amendment) Act No 14 of 1981 which had already been repealed upon the coming into force of the Land Disputes Tribunal Act No. 18 of 1990 on the 1st of July 1993.

11. The two decisions from the court of Appeal were decided before the coming into force of the Land Disputes Tribunal Act No. 18 of 1990 and are therefore not good law in as far as the appeal herein is concerned. The proceedings relating to this appeal were commenced under the provisions of the Land Disputes Tribunal Act No. 18 of 1990 which has itself been repealed.

CONCLUSION

12. The proviso to **Section 8(9) of the Land Disputes Tribunal Act No. 18 of 1990** provided as follows:-

“Provided that no appeal shall be admitted to hearing by the High Court unless a Judge of that Court has certified that an issue of law (other than customary law) is involved”.

13. If this proviso had been invoked, this appeal should not have been admitted to hearing as there is no point of law raised. The appellants were even attacking the manner in which the Tribunal considered the evidence which was a matter of fact. I therefore find that this appeal lacks merit. The same is dismissed with costs to the Respondents.

Dated, Signed and Delivered at *Nairobi* this *25th* day of *April 2017*

E.O .OBAGA

JUDGE

In the absence of advocates who were aware of the date and time of delivery.

Court Assistant: Hilda

E.O .OBAGA

JUDGE