



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT CHUKA
CHUKA ELC CIVIL APPEAL CASE NO 110 OF 2017
FORMERLY MERU ELC CIVIL APPEAL CASE NO.124 OF 2007
MATI M'MURITHI.....APPELLANT
VERSUS
GITONGA NKOBIA.....1ST RESPONDENT
MUTEGI NKOBIA.....2ND RESPONDENT
KIBAARA NKOBIA.....3RD RESPONDENT
PAUL NKOBIA.....4TH RESPONDENT

JUDGMENT

(Being an appeal from the decision and award by the Eastern Province Appeals Committee made on 12.4.2007 and read at the Meru Chief's Court on 15.10.2007).

1. The genesis of this appeal is L.D.T. NO. 27 of 2001. The matter went to the Embu Provincial Appeals Committee and eventually ended in this court.
2. This appeal has the following grounds:
 1. The Provincial Appeals Committee erred in law by failing to make a finding that the District Land Dispute Tribunal acted without jurisdiction and ultra vires.
 2. That the Provincial Appeals Committee erred in law by failing to make a finding that the Provincial Appeals Committee had no jurisdiction to entertain an appeal raised on a claim of ownership of land.
 3. That both the Provincial Appeals Committee and the District Land Disputes Tribunal erred in law by acting contrary to section 159 of the now repealed Cap 300.
 4. That the Provincial Appeals Committee erred in law by not finding that the Land Disputes Tribunal acted in contravention of S3(1) of the Land Disputes Tribunals Act No. 18 of 1990 which gives the tribunal only a limited jurisdiction.

5. That the Provincial Appeals Committee erred in law by awarding 1.40 acres from the appellant's parcel of land L.R. Kiera/E.Magutuni/1540 to Edith Mburia Nkobia despite that the said Edith Nkobia was not a party to the Land Disputes Tribunal case No. 8 of 2000.

3. The appellant in his submissions has restated the grounds set out in the grounds of appeal.

4. The appellant has stated that the provincial appeals committee made a decision in a matter where it had no jurisdiction. He proffered the case of Isaac Maina Murathe versus Jesidah Wanjiru Murathe [2010] eKLR, whose decision was quoted with approval by the court of Appeal in Joseph Karobia Gicheru versus Michael Gachoki Gicheru (Nyeri Civil Appeal No. 161 of 2011). The court said:

“It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not in our view within the provisions of section 3(1) of the Land Disputes Tribunal Act. By section 15 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrate’s Court in cases where such latter court has jurisdiction”.

5. The appellant submits that the Embu Provincial Appeals Committee acted contrary to section 159 of the defunct (now repealed) Registered Land Act (Cap. 300). The appellant also says that the Provincial Appeals Committee erred in awarding 1.40 acres from his parcel number Kiera/E. Magutuni/1540 to Edith Mburia Nkobia when she was not a party to the proceedings before the District Land Disputes Tribunal.

6. Predicated upon his submissions, the appellant prays:

a) That the appeal be allowed with costs to him.

b) That the findings and verdicts of the Embu Provincial Appeals Committee be set aside and be declared null and void.

c) That the respondents be ordered to vacate or be forcibly evicted from land parcel No. Kiera/E. Magutuni/1540.

d) That the respondents be condemned to pay costs.

7. The respondents in their submissions, say that they commenced proceedings in Mwimbi District Land Disputes Tribunal Vide L.D.T. No. 8 of 2000 seeking to have shares in land parcel No. KIERA/EAST MAGUTUNI/1540 measuring 9.0 acres and which belonged to their late grandfather and which has been their home since birth. They laconically state that the appellant has never lived on the land or developed it at all. They say that the appellant lost in L.D.T. 27 of 2001 upon which loss he appealed to the Eastern Provincial Appeals Committee. They say that he lost his appeal and each of them was awarded 1.40 acres. They submit that the award was read in Meru Chief Magistrate’s Court vide L.D.T No. 27 OF 2001 on 15.10.2007. They go on to say that the appellant rushed to the High Court at Embu and filed Civil Case No. 24 of 2005 and this he did while an appeal was still pending at the Provincial Tribunal.

8. The respondents proffer that the appellant was granted 3 months to prosecute the appeal pending at the Provincial Committee. They, however, say that it took him 2 years to do so.

9. The respondents say that the Appeal at the Eastern Province Appeals Committee was not filed within the stipulated time. They also say that this appeal was not filed within the stipulated time. They would like the court to determine the question if or if not the issue of jurisdiction was raised in HCCC NO. 24 of 2005 at Embu where the appellant was the plaintiff and the respondents were defendants. They also say that there was inordinate delay in filing this suit as it was filed in 2007 seven years after the decision of the Land Disputes Tribunal in case No. 8 of 2000.

10. The respondents concluded their submissions by saying that the appeal is unsustainable and should be

dismissed with costs being awarded to them.

11. The issues raised by the respondents regarding

(i) if the appeal filed at the Eastern Province Appeals Committee was filed within the stipulated time, (ii) if this appeal was filed within the statutory period and (iii) if the issue of jurisdiction had been raised by the plaintiff in Embu HCCC No. 24 OF 2005, WERE conclusively determined by Hon. Lady Justice Mary Kasango, J, in her ruling dated 10th February, 2011 which certified that this appeal, as required by section 8 (9) of the Land Disputes Tribunals Act, raised issues of law.

12. My interpretation of that ruling is that only 2 points of law arose. The first one is the question of the purported revocation of the title to the suit land by the Eastern Provincial Appeals Committee and its direction that the land be registered in the name of 7 people who included the appellant. The second one is the question of the legality of the Provincial Committee's award of land to a party who was not one of the parties at the District Tribunal.

13. I have perused the pleadings. I have considered the assertions proffered by the parties in support of their propositions. I have also considered the authorities proffered in this matter.

14. There is a plethora of authorities that District and Provincial Tribunals do not have jurisdiction to revoke titles and to order the issue of titles to litigants. This appeal succeeds in that The Eastern Provincial Appeals Committee order that Title to Parcel No. Kiera/E. Magutuni/1540 and that new titles be issued to 7 people including the appellant was done without jurisdiction.

15. As to whether the Provincial Committee erred in giving land to a person who was not a party in the proceedings before, the District Tribunal, this court acknowledges the informality of proceedings before district and Provincial Tribunals. In areas where the rights of women are trampled upon that informality helps to redress some of the injustices have suffered. However, tribunals should confine themselves to awarding claims to occupy or work land and their awards should not be expanded to direct that land be subdivided and new titles be issued to litigants. It is noted that Land Disputes Tribunals are required to apply recognized customary law and this includes determining rights of women, even at the appellate level.

16. The respondents claim that the land in disputes belonged to their grandfather. They say that they have lived on the suit land all their lives and families live there. The appellant has not denied that the suit land was ancestral or family land. The appellant does not say that he bought the suit land. I opine that giving an order for eviction against the respondents would not only be veritably unconscionable but would from the point of view of a studious bystander, nay a reasonable Kenyan, spawn insubstantial justice. The spirit of our constitution is that substantial justice be availed to all Kenyans.

17. In the circumstances, I will decline to give an order that the respondents be evicted from their ancestral land where they have lived all their lives and which land is not occupied by the appellant to any extent. If the parties, who are relatives, cannot agree, perhaps they will explore another legal avenue to resolve this dispute.

18. I give judgment in the following terms:

1. The decision of the Eastern Provincial Committee to revoke the title to parcel No. Kiera/E. Magutuni/1540 and to give separate titles to 7 individuals including the appellant is set aside and in lieu thereof the 7 individuals including the appellant are awarded rights to occupy and work land in terms of the sizes contained in the Eastern Provincial Committee's decision.

2. As the parties are close relatives, they will bear their own costs in this appeal and in the District and Provincial Tribunals.

Delivered in open court at Chuka this 31st day of October, 2017 in the presence of:

CA: Ndegwa

Mati M'Muriithi – Appellant

Gitonga Nkobia – 1st Respondent

Mutegi Nkobia – 2nd Respondent

Kibaara Nkobia – 3rd Respondent

Paul Nkobia – 4th Respondent

P.M. NJOROGE

JUDGE