



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC APPEAL NO. 50 OF 2013

NJERU MUCHIRA.....APPELLANT

VERSUS

AGNES NJOKI KIGE.....RESPONDENT

**(AN APPEAL AGAINST THE AWARD OF THE CENTRAL PROVINCE LAND DISPUTES
APPEAL CASE NO. 1 OF 2010 DATED 20/10/2010 WHICH APPEAL AROSE OUT OF
KIRINYAGA DISTRICT LDT CASE NO. 21 OF 2005)**

JUDGMENT

AGNES NJOKI KIGE (the Respondent herein) was the complainant in **GICHUGU LAND DISPUTES TRIBUNAL (The Tribunal) in CASE No. 21 of 2005** wherein she had filed a case against **NJERU MUCHIRA** (the Appellant herein) and one **SAMSON GACHOKI RAMITI** as defendants. The dispute touched on land parcel No. **KABARE/MUTIGE/25** which had since been sub-divided into seven (7) parcels being **KABARE/MUTIGE/601, 602, 603, 604, 605, 606, and 607** and distributed among other persons including the Respondent who obtained a portion measuring $1\frac{1}{2}$ acres. In her testimony before the Tribunal, she said she was not sure about the registration number of the parcel that she retained although she said it belonged to her late husband. As was the common practice with regard to pleadings filed in the Land Disputes Tribunal established under the *repealed Land Disputes Tribunal Act*, they were drawn by the litigants themselves and so it would not be expected that they would be drawn in conformity with any legal procedure. One therefore has to comb through the entire record before the Tribunal in an attempt to understand the claim that the parties wanted determined. In this case, it is recorded at page two (2) of the proceedings before the Tribunal that the Respondent stated her case as follows:

“My pleas to this Court are:

1: The second defendant be warned against interfering with my parcel and the life of my family since we are not the ones who sold pieces of land to him.

2: The case which he is stating that there is in Embu Law Courts got terminated and the ruling was that one should stay and feel contented with what he has”.

After hearing the parties, the Tribunal delivered its verdict on 4th October 2005 in which it basically ordered them to maintain the status quo on the land in dispute and directed that the Respondent retains her $1\frac{1}{2}$ acres and the Appellant retains his 2 acres.

That award was filed at the Kerugoya Court and was confirmed as a judgment of the Court in **KERUGOYA LDT CASE No. 38 of 2006** and a decree followed.

The Appellant filed an appeal at the Central Province Land Disputes Appeals Committee (The Committee) being Appeal No. 1 of 2007. In its decision rendered on 20th October, the Committee affirmed the Tribunal's award.

The Appellant was still dissatisfied and on 29th November 2010 filed this appeal in which he raises the following grounds in seeking to have the award set aside:

- 1. That the Central Province Land Disputes Appeals Committee erred when it entertained a claim for registered land under CAP 300 which land KABARE/MUTIGE/25 had already been sub-divided and which sub-division the Tribunal purported to disregard and/or ignore.**
- 2. The Central Province Land Disputes Tribunal erred when it ordered the Respondent to work and occupy land parcels No. KABARE/MUTIGE/602, 603, 604, 605 and 607 without any regard to the registered owner's rights.**
- 3. The Central Province Land Disputes Tribunal erred when it gave the Respondent land that belonged to parties who were not parties to the Appeal or parties in the District Land Disputes Tribunal.**
- 4. The Central Province Land Disputes Tribunal erred when it disregarded the Appellant's inherent rights to sub-divide and/or deal with his land as he wished.**

When the parties appeared before **ONG'UDI J.** on 31st July 2012, it was agreed that the appeal be canvassed by way of written submissions which were to be filed and served on or before 23rd October 2012. That appears not to have been done and it was not until 27th May 2013 that the Appellant's advocate filed submissions. Further delay was caused by the transfer of the appeal to this Court from Embu and when it was eventually mentioned before me on 2nd December 2015, it transpired that the Respondent's advocate had not been served with the Appellant's submissions and so I directed that he be served by 18th February 2016 when the case was fixed for mention to confirm compliance. For some inexplicable reasons however, the appeal remained inactive and it was not until it was listed for dismissal that counsel for the Appellant appeared and informed the Court that she had in fact served her submissions upon counsel for the Respondent who had not filed any submissions. I therefore fixed the judgment date as there was no appearance by the Respondent or her counsel.

I have considered the appeal which is against the decision of the Appeals Committee as provided under **Section 8 (9) of the repealed Land Disputes Tribunal Act.**

Looking at the memorandum of appeal and the submissions by the Appellant's counsel **MS WAIRIMU**, there are three main grounds why the decision of the Committee is being challenged. These are:

- 1. That the Committee entertained a claim for registered land which had already been sub-divided and ordered the Respondent to work and occupy on land parcels No. KABARE/MUTIGE/602, 603, 604, 605 and 607 without regard to the rights of the registered owners.**
- 2. That the Committee gave the Respondent land that belonged to parties that were not parties to the appeal.**
- 3. That the Committee disregarded the Appellant's inherent rights to sub-divide and deal with his land as he wished.**

The jurisdiction of the Tribunal established under **Section 4 of the repealed Land Disputes Tribunal Act** was set out in **Section 3 (1)** as follows:

"Subject to this Act, all cases of a 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 shall be heard and determined by a Tribunal established under Section 4”.

Earlier on in this judgment, I set out the remedies that the Respondent was seeking from the Tribunal and it is clear that she was protecting her right to work and occupy land and also complaining about the Appellant’s trespass to that portion of land that she was occupying. Clearly, orders enforcing a party’s right to occupy and work land and also to stop a trespass were well within the jurisdiction of the Tribunal. Indeed I have not heard the Appellant say that the Tribunal had no jurisdiction and rightly so. The dispute did not involve ownership of land. All that the Tribunal stated in its award was that the parties should continue occupying and working on their respective parcels of land. For avoidance of doubt, this is what the Tribunal said:

“After a careful consideration from the evidence adduced by both parties and their witnesses, the Court got contented with the evidence adduced by the side of the complainant and her witnesses.

Therefore, the parcel in dispute KABARE/MUTIGE/25 the parties should observe status quo.

1. Agnes Njoki Kige should stay with her 1½ acres land.

2. Njeru Muchira should stay with his 2 acres land. Gachoki Kamiti a land buyer should be given his land by Njeru Muchira and should not threaten Njoki Kige with eviction for Njoki is not the one who was selling him land”.

Essentially that decision informed the parties to continue occupying their respective parcels of land hence the reference to maintenance of the “**status quo**”. Nobody was given anything and neither was any party deprived of any right to land as alleged. The Appeals Committee confirmed that decision although in so many words. If the Respondent was given land that belonged to persons who were not parties, as alleged, it was the duty of those persons to move to Court. The Appellant cannot litigate on their behalf. If the Tribunal had disregarded the Appellant’s inherent right to sub-divide his land as alleged, then he should have pursued his remedy in the appropriate forum. As it is, it is the Respondent who had filed a case against him alleging trespass and seeking the protection of her right to occupy and work on the land in dispute.

The up-shot of the above is that this appeal is devoid of merit. It is dismissed with costs.

B.N. OLAO

JUDGE

6TH OCTOBER, 2017

Judgment delivered, dated and signed in open Court this 6th day of October 2017 at Kerugoya

Ms Waweru for Ms Wairimu for Appellant present

Mr. Mwai for the Respondent absent

Right of appeal explained.

B.N. OLAO

JUDGE

6TH OCTOBER, 2017