



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA
AT NYERI
ELC CIVIL APPEAL NO. 2 OF 2016

THOMAS MUTHEE NGARI.....1ST APPELLANT

MICHAEL NGARI.....2ND APPELLANT

-VERSUS-

NYAGUTHII KAGUTHU.....RESPONDENT

(An appeal from the award of Mathira Land Disputes Tribunal (Defunct) case No. 3/10 delivered on 10th January, 2011)

JUDGMENT

Introduction

1. This appeal relates to an award by Mathira Land Disputes Tribunal (now Defunct) case No. 3/10 delivered on 10th January, 2011 in Mathira Land Disputes Tribunal case No. 3 of 2010.

2. The decision appealed from was that:

“The land Konyu/Ichuga/699 belongs to the objector, Nyaguthi Kaguthu, who is the registered owner.”

3. Aggrieved by the aforementioned decision, the appellants (Thomas Muthee Ngari and Michael Ngari) brought the current appeal on nine (9) grounds which can be summarised as follows;

The tribunal erred by:-

- a) Failing to find that the appellants were entitled to a portion of the suit property to wit, LR Konyu/Ichuga/699;
- b) Failing to give reasons as to why the respondent was not called to testify;
- c) Failing to take into account the developments effected on the suit property by the appellants; and
- d) Failing to take into account the fact that the appellants were not notified about the succession

proceedings instituted by the respondent.

4. For the foregoing reasons, the appellants urge the court to allow the appeal, set aside or vary the decision of the Tribunal and order that the appellants are entitled to half share of the suit property, being 1.95 acres.

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

Appellants' submissions

6. In the submissions filed on behalf of the Appellants, the following issues are said not to be in dispute:-

1. That the suit property was originally registered in the name of Kaguthu Macharia, deceased.
2. That the appellants have developed the suit land; and
3. That the appellants live on the suit land.

7. It is contended that Nyeri HCC No. 120 of 1993 was not fully heard and determined, as it was dismissed for want of prosecution. Besides, it is pointed that the plaintiff/claimant in that suit was not the appellants' mother but the appellants' aunt.

8. The Tribunal is faulted for having failed to take into account the above facts while making its determination concerning the dispute preferred before it.

9. It is contended that the evidence adduced before the Tribunal showed that the appellants were entitled to half share of the suit property.

The respondents submissions

10. On her part the respondent contends that the tribunal had no jurisdiction to hear and determine the dispute preferred before it as it touched on title to land; that the appellants' claim as it relates to succession of the estate of Kaguthu Macharia should have been pursued through the succession proceedings filed by the respondent and that the appellants have failed to disclose to this court that vide Nyeri High Court Succession Cause No. 46 of 1992 they filed summons for revocation of the grant issued to the respondent whose outcome they have failed to disclose to the court.

11. The appellants are also said to have failed to disclose to the court that there was another Tribunal Case to wit, Mathira Land Tribunal Case No.12 of 2006 between the parties to this suit.

12. It is admitted that the appellants are in occupation of the suit property but contended that they took possession of the suit property during the pendency of the above mentioned suits.

13. In view of the foregoing, it is contended that the appeal has no merits and the is court urged to dismiss it with costs to the respondent.

Analysis and determination

14. There being no dispute that the dispute preferred before the tribunals herein touched on title and ownership of registered land, the sole issue for determination is whether the Land Disputes Tribunals established under **Section 3(1)** of the Land Disputes Tribunals Act, No. 18 of 1990 (now repealed) had power/jurisdiction to hear and determine disputes touching on ownership and title to registered land.

15. In determining this issue, I will not re-invent the wheel but adopt the decision in the case of **Samuel Kamau Macharia & Another v. Kenya Commercial Bank & 2 others (2012) eKLR** where it was held that a court's Jurisdiction flows from either the Constitution or Legislation or both. A court of law

(tribunal) can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law. By arbitrating over a matter they had no power to arbitrate, the Tribunals acted ultra vires. That being the case, their decision was a nullity in law. In this regard see the case of **Republic v. Chairman, Lurambi Land Dispute Tribunal & 2 others (2006) eKLR** (*supra*) and also 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. (See Wachira wambu Case (*supra*) and Julius Mburu Mbuthia case, *supra*) ...”.

16. It is clear from the above cited authorities, that the Mathira Land Dispute Tribunal had no jurisdiction to hear and determine the dispute preferred before it because it touched on title to registered land. That being the case, the decision it made was a nullity in law.

17. Having found the proceedings preferred to the defunct land disputes tribunal in respect of this matter to have been a nullity in law, I declare them as such.

18. Since the foregoing determination suffices to settle the dispute herein, I need not determine the other issues raised in the appeal.

19. The upshot of the foregoing is that the appeal herein is allowed but only for the reason that the Mathira Land Disputes Tribunal had no jurisdiction to deal with the matter preferred before them. The effect of allowing the appeal is that the parties revert back to the status obtaining before the filing of Mathira land Disputes Tribunal Case No. 3 of 2010.

20. Costs of defending the appeal are awarded to the respondents since the appellants filed the case against the respondent before the Tribunal.

Dated, signed and delivered at Nyeri this 14th day of September, 2016.

L N WAITHAKA

JUDGE

In the presence of:

Thomas Muthee Ngari – 1st applicant

Michael Ngari – 2nd applicant

Julius Kaguthi on behalf of Ngaguthi Kaguthu – respondent

Court clerk - Esther