



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA**

**ELC APPEAL NO. 2 OF 2014**

KAGUNYU MURIGU.....APPELLANT

VERSUS

PAUL NJAGI KAGUNYU.....1<sup>ST</sup> RESPONDENT

SAMUEL MURIGU KAGUNYU.....2<sup>ND</sup> RESPONDENT

***(BEING AN APPEAL FROM THE AWARD OF GICHUGU LAND DISPUTES TRIBUNAL DELIVERED ON 6<sup>TH</sup> AUGUST 2006 IN KIRINYAGA DISTRICT LAND DISPUTES TRIBUNAL AT GICHUGU CASE NO. 51 OF 2008 AND THE AWARD OF THE CENTRAL PROVINCIAL LAND DISPUTES APPEALS COMMITTEE AT NYERI UNDATED)***

**JUDGMENT**

The appellant herein (**KAGUNYU MURIGU**) is the father to the two respondents **PAUL NJAGI KAGUNYU** (1st respondent) and **SAMUEL MURIGU KAGUNYU** (2nd respondent). Their dispute is in respect to land parcel No. BARAGWI/GUAMA/1293 (the suit land) which is registered in the names of the appellant who also owns another parcel of land in Mwea.

The appellant has two wives and fifteen (15) children and has already decided how to share his land between the two houses. However, the respondents are not happy with the share given to them at Mwea which they claim is dry. Further, it is their case that the suit land is held by the appellant in trust for the whole family.

The respondents therefore filed Case No. 51 of 2008 at the **GICHUGU LAND DISPUTES TRIBUNAL** (the Tribunal) seeking to be given a share in the suit land. After hearing the parties, the Tribunal made the following award:-

***“After a careful scrutiny (sic) of the evidence adduced by both parties and the documentary evidence produced, the panel of elders are of the opinion that the parcel of land in dispute Baragwi/Guama/1293 registered in the names of Kagunyu Murigu and comprising of approximately area of 2 acres should be sub-divided and distributed among the children of the defendant”***

The Tribunal then proceeded to share out the suit land among the children with each of the respondents getting  $\frac{1}{4}$  of an acre. The Tribunal further made the following order:-

***“It is also ordered that the Executive officer to sign all the necessary documents for the same”***

A decree followed after that award was adopted as a judgment of the Kerugoya Principal Magistrate's Court on 4th August 2009.

It is not clear why the appellant did not file any appeal to the Provincial Appeals Committee under ***Section 8 of the repealed Land Disputes Tribunal Act***. The record shows that the appellant filed **EMBU HIGH COURT MISCELLANEOUS CIVIL APPLICATION No. 48 of 2012** seeking leave to appeal out of time. That application was granted by **ONG'UDI J.** on 30th July 2012 whereupon this appeal was filed originally at Embu High Court before it was transferred to this Court.

The appellant raises the following grounds of appeal against the decision of the Tribunal:-

- 1. That the District Land Disputes Tribunal at Gichugu erred in law in dealing with registered land while they had no jurisdiction contrary to the Land Disputes Act of 1990.***
- 2. That the Tribunal erred in law in entertaining the respondents and awarding them portions of land owned by the appellant and registered in his name as in so doing it went beyond its jurisdiction thus contravening the Registered Land Act Cap 300 Section 27 and 28 which vest in the registered proprietor rights and privileges and in so doing the Tribunal infringed the rights of the appellant who is the respondents' father and the action perpetuated a miscarriage of justice towards the appellant.***
- 3. That the Tribunal erred in law by making a decision on an issue of sub-division of land ordering the issuing of new titles hence usurping the powers of the Land Control Board a matter that is contrary to the Land Control Act Cap 302 Laws of Kenya.***
- 4. That the Tribunal erred in law in usurping the rights of the registered proprietor and making decision on registered land without his consent and distributing land to his sons without his consent.***
- 5. That the appellant has appealed to this Court on the ground that this Court is seized with power conferred to it by Section 159 of the Registered Land Act Cap 300 Laws of Kenya in dealing with title to land hence it is competent to set aside judgment emanating from the adoption of the award of the Gichugu Land Disputes Tribunal as the Tribunal had no powers to deal with title contrary to Section 3 of the Land Disputes Tribunal Act of 1990 which has already been repealed by the Environment and Land Court.***

The appellant therefore prays that the award of the Land Disputes Tribunal at Gichugu and its subsequent adoption in Kerugoya Principal Magistrate's Court in L.D.T Case No. 12 of 2009 be set aside.

As the parties are acting in person, the appeal was canvassed orally before me on 26th September 2016.

The appellant's submission in that the Tribunal had no jurisdiction to force him to sub-divide his land during his life-time.

The respondents submitted that the appellant was trying to disinherit them and that both the Tribunal and Appeals Committee arrived at a proper decision.

There is no record to show that this appeal was ever heard at the Appeals Committee and that explains why **ONG'UDI J.** granted leave to file it in Court.

I have considered the appeal. It can be determined on one ground only and that is whether or not the Tribunal had the jurisdiction to determine the dispute and issue the orders that it did.

This dispute was heard by the Tribunal exercising its powers under the now ***repealed Land Disputes Tribunal Act of 1990. Section 3 (1)*** of the said Act provides that:-

**“Subject to this Act, all cases of a civil nature involving a dispute as 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”**

It is now well settled that a Land Disputes Tribunal exercising its jurisdiction under the **repealed Land Disputes Tribunal Act of 1990** could not deal with a dispute involving title to registered land. In the case of **JOSEPH MALAKWEN LELEI & ANOTHER VS RIFT VALLEY LAND DISPUTES APPEALS COMMITTEE & TWO OTHERS C.A CIVIL APPEAL No. 82 of 2006 (ELDORET) 2014 e K.L.R**, the Court of Appeal after citing **Section 3 (1) of the repealed Land Disputes Tribunal Act** had this to say:-

***“Evidently, the above provision does not include jurisdiction to deal with issues of determination of title to or ownership of registered land, or the determination of a trust in favour of a party, which in essence was the basis of the 3rd respondent’s claim. Having found that the Tribunal and the Appeals Committee lacked jurisdiction to arbitrate on the matter before them, then all other grounds become moot. We say so because it is trite that where a Court or tribunal takes upon itself to exercise a jurisdiction which it does not possess, its proceedings and decisions are null and void. It then follows that every other proceedings, decision or award that results from such a process must be construed as a nullity”.***

See also the case of **JONATHAN AMUNAVI VS THE CHAIRMAN SABATIA LAND DISPUTES TRIBUNAL & ANOTHER C.A CIVIL APPEAL No. 256 of 2002 (KISUMU)** and **DOMINIC KIHU VS JOHANA WAKARITU 2012 e K.L.R (NYERI)** where the Court of Appeal reiterated that a Tribunal exercising jurisdiction under the **repealed Land Disputes Tribunal Act** could not entertain disputes and make determinations regarding title or ownership of registered land.

In this dispute now before me, the Tribunal not only purported to sub-divide the suit land which is registered but even proceeded to direct the Executive officer of the Subordinate Court to sign all the relevant documents to facilitate such sub-division. That was not within the Tribunal’s jurisdiction. It follows therefore that the Tribunal’s award dated 23rd October 2008 distributing the suit land among the respondents and other children as well as all the other orders flowing therefrom including the adoption of that award in Kerugoya Principal Magistrate’s Court Case No. 12 of 2009 are all nullities and of no effect.

The up-shot of the above is that this appeal is allowed. The award of the Gichugu Land Disputes Tribunal and its subsequent adoption as a judgment of the Court in Kerugoya Principal Magistrate’s Court Case No. L.D.T 12 of 2009 dated 4th August 2009 and all orders flowing therefrom are hereby set aside.

As the parties are family, each shall meet their own costs.

**B.N. OLAO**

**JUDGE**

**14<sup>TH</sup> OCTOBER, 2016**

Judgment dated, delivered and signed in open Court this 14<sup>th</sup> day of October 2016

Appellant present in person

Defendants present in person

Mr. Gichia Court Clerk present

Right of appeal explained.

**B.N. OLAO**

**JUDGE**

**14<sup>TH</sup> OCTOBER, 2016**