



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
OF KENYA AT NYERI

CIVIL APPEAL NO. 131 OF 2014

KIRATU KARIUKI NGANDU APPELLANT

VERSUS

MURIUKI MUNIU RESPONDENT

JUDGMENT

Introduction

1. This appeal relates to an award of the Limuru Land Disputes Tribunals made on **16th September, 2010** and approved by the Provincial Land Disputes Appeals Tribunals on **6th July, 2011**.

2. The award of the Land Disputes Tribunal appealed from to the Provincial Land Disputes Appeals Tribunal was that:-

“a) Land title deed for LR No.Limuru/Bibirion/3692 held by Kiratu Kariuki be cancelled and awarded to Muiruri. The land should be demarcated to maesure one acre...”

3. On appeal to the Provincial Land Disputes Appeals Tribunal, the Appeals Tribunal held:-

“Kiratu Kariuki Ngandu, the appellant, having agreed with Thuo Gichana who was in the suit parcel No.Limuru/Bibirioni/3692 that they have never entered to any consent in the Land Control Board. The Provincial Land Disputes Appeals Tribunal agrees with their consent and asks the Kiambu District Land Registrar to delete Kiratu Kariuki Ngandu from the register since both Mr. Thuo Gichana and Kiratu Kariuki have disowned the consent dated 13/8/2009 which was presented to you for registration and which also has many anomalies. The Respondent Mr. Muniu to have the same 0.461 hectares transferred to him byThuo Gichana after the said rectification.”

4. Aggrieved by the aforementioned award/decision of Provincial Appeals Tribunal, the appellant brought the current appeal on the grounds that the Land Disputes Tribunal acted *ultra vires* by hearing and determining matters that were not within its ambit under **Section 3(1)** of the Land Disputes Tribunal Act No.18 of 1990 (now repealed), in that the suit property to wit, L.R NO.Limulu/Bibirioni/3692 was registered in favour of the appellant under Registered Land Act, Cap 300 laws of Kenya (now repealed) and that the Land Disputes Tribunal erred in law by arbitrating on the dispute when it was fully aware of the death of the 1st objector in the proceedings hereto.

Submissions

5. The appeal was disposed of by way of written submissions.
6. In his submissions, the appellant has given a brief background of the circumstances that led to the award appealed from and blamed the tribunal for having proceeded with the matter in disregard of the fact that one of the parties to the dispute before it had passed on.
7. On behalf of respondent, it is submitted that under **Section 3(1) (a)** of the Land Disputes Tribunals Act (now repealed), the tribunals created there under, had jurisdiction to determine claims concerning land held in common or held in trust. In this regard, it is submitted that a trust presupposes that the trustee holds the land in common.
8. Concerning the contention that the proceedings before the tribunal were a nullity for having been conducted in disregard of the fact that one of the parties to it had passed on, it is submitted that the absence of the deceased did not vitiate the proceedings or the resultant award as the suit property was in the name of the Appellant.

Analysis and determination

9. It is not in dispute that the subject matter before the land Disputes Tribunal and the Appeals Tribunal was registered land and that one of the parties to it had passed on before the proceedings lodged at the tribunal were concluded.
10. The two factual situations in this case raise two legal questions, which are:-
 - a. Whether the tribunal had jurisdiction to hear and determine a dispute concerning registered land? and
 - b. Whether the death of the 1st objector in the proceedings before the tribunal without replacement vitiated the proceedings conducted by the tribunal?
11. In answering the first question, I adopt the decision in 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 wambugu Case (*supra*) and Julius Mburu Mbuthia case, *supra*). It follows therefore that the instant issues are not *Res judicata* due to the fact that they were deliberated upon and determined by an incompetent tribunal that lacked jurisdiction over the same..

In the case of Vincent Kipsongok Rotich v. Orphah Jelangat Ngelechei (2014)e KLR *supra*, the learned judge Munyao J., declined to declare the suit therein *res judicata* despite the existing decision/order that had been made by the LDT and adopted by the Hon. Magistrates Court.”

12. Although the above determination suffices to determine this appeal, I wish to point out that the tribunal erred in law by proceeding with the matter after the demise of one of the parties thereto without substituting that party with her personal representative. By so doing, the tribunal unlawfully compromised the interest of the estate of the deceased.

13. The upshot of the foregoing is that the appeal has merit and is allowed as prayed.

Dated, signed and delivered at Nyeri this 26th day of May, 2015.

L N WAITHAKA

JUDGE

In the presence of:

Mr. King'ori for the Respondent

Mr. Kiratu Kariuki Ngandu for the applicant

Court assistant – Lydia