



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NYERI**

**ELC CIVIL APPEAL NO. 120 OF 2014**

**GABRIEL KARIMI MWANGI.....APPELLANT**

**-VERSUS-**

**KARAYA RUIRE.....RESPONDENT**

**JUDGMENT**

**Introduction**

1. This appeal relates to an award of the Provincial Land Disputes Appeals Tribunal made on **13<sup>th</sup> July, 2011** in Nyeri land claim No. 5 of 2006.
2. The award appealed from was to the effect that the Appellant, Gabriel Karimi Mwangi, should give to the respondent, Karaya Ruire, 1.9 acres from the suit land which measures 3.9 acres.
3. The Appeals Tribunal also adopted the award of the District Tribunal (Mukurweini Land Disputes Tribunal) which was in the following terms:

**“FINDINGS**

**This court has found that Gabriel Karimi the objector genuinely bought land from Wairuri Kabata as proved by the witnesses’ testimonies and was given access of his land by his seller Wairuri Kabata.**

**It has been proved that the plaintiff is a son of Joyce Wambui daughter of Wairuri Kabata the initial owner of land parcel No. Githi Kirerema/316. The plaintiff is a dependant in the lineage of inheritance and a grown up whom Gabriel Daniel denied the chance to substitute his late mother in the succession case No.156 of 2001. This court did not find the reasons as to why Gabriel cancelled the name of Wairuri Kabata from the joint land’s register when he was not the next of kin or blood relative or any evidence to show that he had bought the 1.9 acres of land.**

**Since the deceased Wairuri Kabata had sought and obtained consent for the partition of the land from the L.C.B, it is therefore evident that the 1.9 acres of land belongs to her ignoring the opportunistic progresses that gave Gabriel the mandate to take whole possession of 3.9 acres of the land. Nevertheless the deceased is buried in the land that was lawfully hers thus for the grandson.**

## **AWARD**

**The elders therefore concluded that the land in question i.e Githi/Kirerema/316 be subdivided into two portions of 2.0 acres and 1.9 acres. The executive office of the court to sign subdivision and transfer documents on behalf of the objector. Therefore, Gabriel Karimi Mwangi will get a land of parcel of 2.0 acres and Karaya Ruirie will get 1.9 acres of land.”**

4. Aggrieved by the aforementioned award/decision of the Appeals Tribunal, the appellant (Gabriel Karimi Mwangi) brought the current appeal on the grounds that:-

**a. The tribunal lacked jurisdiction to hear and determine the dispute preferred before it because it involved a dispute over title and ownership to registered land;**

**b. The tribunal erred by dealing with a dispute which had been dealt with by the High Court in Nyeri High Court Succession No.156 of 2001;**

**c. The tribunal erred by inferring fraud in transfer of the suit property to the appellant when it had no jurisdiction to do so;**

**d. The tribunal usurped the court’s mandate by ordering its executive officer to sign subdivision and transfer documents in favour of the respondent.**

5. For the foregoing reasons, the appellant urges this court to set aside the awards hereto and substitute them with an order dismissing the proceedings which culminated in the impugned awards. The appellant also seeks the costs of the appeal and those of the cases preferred before the tribunals.

## **Submissions**

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

7. In the submissions filed on behalf of the Appellant, reference is made to the provisions of **Section 3(1)** of the Land Disputes Tribunal Act, No. 18 of 1990 (now repealed) and submitted that the power of the Land Disputes tribunals did not extend to conferring title on any person.

8. By purporting to cancel the title held by the appellant over the suit property and issuing a portion thereto to the respondent, both the District and the Appeals Tribunals are said to have exceeded their jurisdiction.

9. Arguing that the Appeals Tribunal inferred fraud on the part of the appellant, counsel for the appellant submitted that the Tribunal had no power to infer fraud in the transfer of the suit property.

10. The District Tribunal is also said to have exceeded its mandate by purporting to find fault (sit on appeal) in the decision of the High Court in the Succession Cause hereto.

11. On behalf of the Respondent, it submitted that the Tribunal did not err because it had power to order subdivision of land. Concerning the contention that the Tribunal purported to fault the High Court in the Succession Cause hereto, it submitted that the Tribunal did not contradict the High Court in their determination because the High Court had not distributed the estate of the respondent’s grandmother.

12. With regard to the contention that the Tribunal imputed fraud in the transfer of the suit property to himself, it is contented that the Tribunal only expressed reservations concerning the circumstances surrounding the transfer of the suit property to the appellant.

## **Analysis and determination**

13. There being no dispute that the dispute preferred before 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.

14. 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)**. Also see 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) ...”.**

15. It is clear from the above cited authorities, that the Tribunals hereto lacked power/jurisdiction to hear and determine the dispute preferred before them because it touched on title to registered land. That being the case, the decisions which they made were a nullity in law.

16. Having found the proceedings preferred at the defunct Land Disputes Tribunal in respect of this matter to have been a nullity in law, I declare them as such and direct that the parties revert to the status which obtained before the impugned proceedings were taken.

17. As the foregoing determination suffices to settle the dispute herein, I need not determine the other issues raised in the appeal, some of which appear to be issues of fact, which this court lacks jurisdiction to hear and determine.

18. The upshot of the foregoing is that the appeal has merit and is allowed with costs to the appellant.

**Dated, signed and delivered at Nyeri this 28th day of July, 2016.**

**L N WAITHAKA**

**JUDGE**

In the presence of:

Mr. Kiminda for the respondent

N/C for the appellant

Court assistant - Lydia