



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYERI

ELCA NO. 133 OF 2014

(FORMERLY NYERI HCCA NO. 122 OF 2011)

SAMSON GATHINJI NUNU.....APPELLANT

-VERSUS-

MARY WAKARIMA GITHIGI.....RESPONDENT

RULING

1. This appeal relates to the award of the Land Disputes Appeals Committee Central, read to the parties on 14th July, 2011.

2. Through that award, the Appeals Tribunal upheld the award of the Tetu Land Disputes Tribunal which was in the following terms:

“On the above aforesaid, this tribunal has ruled that Mary Wakarima Gathigi and her family settles in the eight (8) acre Solai farm and Mary Mukami Gathigi and her family settles at Gura farm parcel No: Thegenge/Gathuthi/889 and Thegenge/Gathuthi/ 990 respectively to enhance harmony and peace. Samson has the option to stay with either of the parties”.

3. In upholding the decision of the District Tribunal, the Appeals Committee observed:

“The provincial elders having listened to both parties having perused through the necessary documents pertaining to the suit parcel, the appellant being the respondent’s wife and to which he does not refuse, the families having been staying in the suit parcels for more than 50 years keeps the Nyeri South LDT side and award workland to the suit parcels Thegenge/Gathuthi/990, 989 and 888 and the apportioning to reflect equality in the family and to be as they stay.”

4. Aggrieved by the above decision of the Appeals Tribunal, the appellant appealed to this court on four (4) grounds which can be summarised as follows:

i. The Appeals Tribunal had no jurisdiction to hear and determine the dispute preferred before it;

ii. That the appeals committee condemned him unheard by failing to consider his submissions; and

iii. The appeals committee entertained extraneous and irrelevant matters thus making the proceedings irregular.

5. The appeal was disposed on the basis of the pleadings filed.

Analysis and determination

6. In the case of **Joseph Malakwen Lelei & Another V. Rift Valley Land Dispute Appeals Committee & 2**

others (2014) eKLR it was held:

“Section 3 of the Land Dispute Tribunal Act (repealed) gives jurisdiction to Land Dispute Tribunal to handle claims in the following matters only:-... all cases of 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,.....evidently the above provisions does not include jurisdiction to deal with issues of determination of title or ownership of registered land.....”

7. Also see the case of **Benson Maina Thiongo V. Joseph Waweru Mwangi (2006)eKLR** where it was, *inter alia*, held:-

“Orders made by a tribunal without jurisdiction are null and void.....”

8. From the evidence adduced before the Tribunal, it is clear that the dispute preferred before the Tribunal related to ownership of registered land. The respondent claimed that she was entitled to land that was at the material time registered in the name of the appellant (her husband) and her co-wife. She contended that the appellant sub-divided the land and transferred it to himself and her co-wife without her knowledge. The Tribunal heard that the respondent lived in one of the suit properties and was not willing to move out.

9. The appellant admitted that the respondent was his wife but explained that owing to differences between him and the respondent, he called clan elders who decided that the respondent leaves the suit properties and goes to live in another parcel of land belonging to him in Solai Nakuru.

10. According to the appellant, he invited the respondent to come and live in the suit properties after clashes broke out in Solai.

11. The appeal herein turns on the following issues:

i. Whether the Tribunal had power to hear and determine the dispute before it given the fact that it touched on title to land"

ii. Whether the appeals Tribunal failed to consider the appellant's submissions; and

iii. Whether the appeals Tribunal considered extraneous facts in reaching its decision.

12. With regard to the 1st issue, having found that the decision turned on ownership of the suit property, which is registered land, I adopt the decision in the case of **Joseph Malakwen Lelei & Another V. Rift Valley Land Dispute Appeals Committee & 2 others (2014) e KLR** where it was held:

“Section 3 of the Land Dispute Tribunals Act (repealed) gives jurisdiction to Land Dispute Tribunal to handle claims in the following matters only:-... all cases of civil nature involving a dispute to

d. the division of, or the determination of boundaries to land, including land held in common;

e. a claim to occupy or work land; or

f. trespass to land,.....evidently the above provisions does not include jurisdiction to deal with issues of determination of title or ownership of registered land.....”

13. Since the dispute preferred before the Tribunal could not be determined without considering and determining the rights of the parties to the suit property, which was registered land, I find and hold that the Tribunal lacked jurisdiction to hear and determine the dispute preferred before it.

14. As without jurisdiction, the Tribunal could not make any further step in the matter, apart from awarding costs of the suit, there is no reason to consider the other issues framed for the court's determination.

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

Dated, signed and delivered at Nyeri this 18th day of December, 2017

L N WAITHAKA

JUDGE

Coram:

Mr. Macharia h/b for Mr. Ombongi for the appellant

Ms Mwikali h/b for Mr. Gichuki for the respondent

Court assistant - Esther



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