REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL APPEAL 64 OF 1999

CHARLES MUCHEMI KARIUKI …….. PLAINTIFF

VERSUS

MOSES GATHIRIMU KIMARI …….. DEFENDANT

JUDGMENT

The appeal before court relates to the finding and the award of Central Province Appeals Committee dated 3rd December 1998. It appears from the record that this matter emanated from SPM Nyeri Civil Case No. 347 of 1994. The Nyeri court referred the dispute between the parties relating to Githi/Igana/788 to the Land Dispute Tribunal established for Nyeri District. The referral was made on 4th April 1996. The respondent has argued that that referral was under order XLV of the Civil Procedure Rules and not under the Land Dispute Tribunal Act. At this juncture I would wish to state that I have considered that argument and I find that the same is not supported by the documents before court. The respondent annexed a copy of the referral to the tribunal from the SPM Nyeri. That referral is clear from its title that the matter was referred under the Land Dispute Tribunal Act No. 18 of 1990. There is therefore no basis to argue that the matter was referred under the Civil Procedure Rules. In any case the civil case under which the SPM Nyeri referred the matter to the tribunal was dismissed for want of prosecution. Although the appellant in his grounds of appeal has raised issues relating to the lack of land board control consent to the subject transaction amongst other grounds I find the main ground on which this appeal is based is whether the land dispute tribunal and the appeal's committed had jurisdiction to give orders which in effect ordered the appellant to subdivide his land and awarded portions of that land to the respondent and to another party who was not a party to the action. Section 3 (1) of the Land Dispute Tribunal Act is the section which sets out the limitation of the jurisdiction of the tribunals. It provides;-

"(1) 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."

As can be seen from the provisions of that section the appeals committee did not have jurisdiction to give effect to a sale agreement between the parties and to order the appellant's land be subdivided. It went further after ordering subdivision to award portions of that land to the respondent and another party. Obviously, the tribunal exceeded his jurisdiction. It acted ultra vires it is jurisdiction. As was held by Aganyanya J. in Mbugua Thiga - vs- Teresia Wangechi Macharia and 2 others *NAIROBI HC CIVIL APPEAL NO. 460 OF 2000 (unreported)* as page 12 of the said judgment;

"But neither the land disputes tribunal at Maragua nor the provincial land disputes appeals committee had any power to adjudicate over the issue of title to land since this jurisdiction is vested either in the High Court and or the resident magistrate's court depending on the pecuniary value of the subject matter – See Section 159 of the Registered land Act. to carry out the orders of Maragua divisional land disputes tribunal and or the provincial land disputes appeals committee would result in the rectification of the register which goes against the spirit of section 143 of the registered land act when conditions laid down in that section for such an order to be made were not shown to exist in this case."

The said reasoning by the Learned Judge equally applied in this case. The Central Province Appeals Committee did not have jurisdiction to order subdivision of the appellant's land. In the case of *HC Misc application No. 689 of 2001 Republic – vs- Kajiando Lands Disputes Tribunal.* The Honourable Justice Nyamu in a case similar to this appeal stated as follows:-

"The irregularities mentioned above notwithstanding this court cannot countenance nullities under any guise. This court would like to apply the principle enunciated in the landmark case of ANIMISTIC v FOREIGN COMPENSATION 1969 2 AC 147 "If a tribunal mistook the law applicable to the facts as it had found them, it must have asked itself the wrong question i.e one into which it was not empowered to inquire and so had no jurisdiction to determine its purported determination not being a determination within the meaning of the empowering legislation was accordingly a nullity."

In view of what is stated herein before the appellant's appeal does succeed for the appeals committee exceeded its jurisdiction. Accordingly the Central Province Appeals Committee Award dated 3rd December 1998 in Appeal Case No. Nyeri/28/98 is hereby set aside. The appellant is awarded costs of this appeal.

Dated and delivered at Nyeri this 30th day of June 2008.

MARY KASANGO

JUDGE