



Case Number:	Civil Appeal 79 of 2008
Date Delivered:	29 Nov 2013
Case Class:	Civil
Court:	High Court at Nyeri
Case Action:	Judgment
Judge:	Antony Ombwayo
Citation:	Josphat Kimani Muiruri v Ng'ang'a Kabugua 2013] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Land and Environment
History Magistrates:	-
County:	-
Docket Number:	-
History Docket Number:	-
Case Outcome:	Dismissed with costs
History County:	-
Representation By Advocates:	Both Parties Represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

ENVIRONMENT & LAND COURT

CIVIL APPEAL NO.79 OF 2008

JOSPHAT KIMANI MUIRURI.....APPELLANT

VERSUS

NG'ANG'A KABUGUA.....RESPONDENTS

J U D G M E N T

The genesis of this matter is Land Dispute Case No.58 of 2004 between Josphat Kimani Muiruri hereinafter referred to as the appellant and Ng'ang'a Kabugua hereinafter referred to as the respondent.

In brief, *the respondent* instituted a claim against the *appellant* before the Makuyu Land Disputes Tribunal on the 21/9/2004.

The respondent appeared before the Tribunal and complained that his mother's land **Loc.17/Sabasaba/113** had been transferred to the name of Muiruri Kimani and then subsequently to the appellant. The appellant conceded that the land was transferred to Muiruru Kimani and finally to him. He is currently the registered proprietor of the parcel of land. The documents produced during the hearing at the Tribunal were the Green Card and title deed which showed that the property was registered in the name of the appellant.

In a nutshell, the Makuyu Land Disputes Tribunal held that the appellant was a distant relative and had no business inheriting Nyambura Kabura Ngoro's property. Moreover the Tribunal found that some of the documents presented by the appellant were false. They concluded that the respondent was the sole inheritor of the late Nyambura Kabugua Ngoro's land parcel **No.Loc.17/Sabasaba/113**.

The appellant herein appealed to the Central Provincial Land Appeals Committee on grounds that he was the owner of the parcel of land.

The respondent argued that the land belonged to his step mother who brought him up after the death of his mother. He left the land with the respondent who lived with her and kept her.

The appeals committee held that the land should lawfully go to the respondent and should rightfully belong to him. The appeal was dismissed on 30/7/2008 and the appellant given 60 days to appeal to the High Court.

The Memorandum of Appeal dated 17/9/2008 filed on 26/9/2008 is based on grounds of appeal that the Provincial Appeal Committee and the District Tribunal erred in Law in hearing the dispute of plot number Loc.17/Sabasaba/113 without any jurisdiction. Moreover, that the Provincial Appeals Committee and the District Tribunal erred in Law in challenging the indefeasible title of the appellant and that the Provincial Appeals Committee and the District Tribunal exceeded the powers conferred by Section 3 of the Land Dispute Tribunal Act No.18 of 1990 and determined issues of ownership. **Lastly** that the

Provincial Appeals Committee and the District Tribunal exceeded their powers by awarding Land parcel No.Loc.17/Sabasaba/113 to the respondent.

The appellant filed written submissions whose **gravamen** is that both the Central Provincial Appeals Committee and the Makuyu Land District Tribunal lacked jurisdiction to entertain the dispute as they entertained a matter touching on title and thus ownership of land.

The respondent also filed submission whose **gravamen** is that the appeal was dismissed summarily on grounds that no point of law existed to justify the appeal. The refusal to admit the appeal should have marked the end to the matter. The respondent further contends that the appeal lacks merit as the Land Disputes Appeals Committee had duly confirmed the award.

This court has gone through the proceedings of the Tribunal, proceedings of the Appeals' Committee and do find that the Tribunal was improperly constituted when 12 members sat to deliberate on the dispute whilst the law as it then was is very clear. **Section 4 of the Land Disputes Tribunal Act no 18 of 1990(repealed) established a Tribunal that was called Land Disputes Tribunal for every registration district. Each tribunal consisted of a chairman who was appointed from time to time by a District Commissioner from a panel of elders appointed under section 5 of the Act and either two or four elders selected by the District commissioner from a panel of elders appointed under section 5.** This court finds that constituting a panel of 12 members was a both a **procedural impropriety** and an **illegality** that makes the finding of the tribunal illegal. This alone renders the decision of the Makuyu Land Dispute Tribunal a nullity.

On the issue of jurisdiction section **3(1) of the land Disputes Tribunal Act no 18 of 1990 now repealed by Environment and Land Court Act No.19 of 2011** did not cloth the Land Disputes Tribunals with jurisdiction to adjudicate on a dispute on ownership. The fact that the appellant was the registered proprietor of the parcel of land should have been considered by the Land Dispute Tribunal to hold that they had no jurisdiction to adjudicate on ownership and therefore should have downed their tools. In **Owners of the Motor vessel "Lilians" -VS- Caltex Oil(k) Ltd Civil Appeal No.50 of 1989** the Court of Appeal held that a court of law should down its tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction. The same applies to Tribunals and quasi-judicial bodies.

The Tribunal also appeared to have adjudicated on the estate of the late Nyambura Kabugua. Section 3(1) of the Land Disputes Act does not confer unto the Tribunal the power to entertain a dispute premised on succession. I agree with counsel for the appellant that in finding that the respondent was entitled to inherit the property of the late Nyambura Kabugua, the Tribunal was wading into the jurisdiction of the High Court to adjudicate succession Disputes under the provision of **Section 47 of the Laws of Succession Act Cap 160.**

This court finds that both decision of the Makuyu Land Disputes Tribunal and Central Provincial Land Disputes Tribunal were **substantively ultra vires** as they both lacked jurisdiction and **procedurally ultra vires** as the members who sat exceeded the number authorized by law. The leading authority on the principle of procedural ultra vires is the decision of **Lord Reid in Anisminic Ltd v Foreign Compensation Commission(1969)1 ALL ER 208 where he states thus :**

..... there are many cases where, although the tribunal had jurisdiction to enter on the inquiry, it has done or failed to do something in the course of the inquiry which is of such a nature that its decision is a nullity. It may have given its decision in bad faith. It may have made a decision which it had no power to make. It may have failed in the course of the inquiry to comply with the

requirement of natural justice. It may in perfect good faith have misconstrued the provisions giving it power to act so that it failed to deal with the question remitted to it and decided some question which was not remitted to it. It may have refused to take into account something which it was required to take into account. Or it may have based its decision on some matter which, under the provisions setting it up, it had no right to take into account. I do not intend this list to be exhaustive. But if it decides a question remitted to it for decision without committing any of these errors it is as much entitled to decide that question wrongly as it is to decide it rightly.

The upshot of the above is that the appeal is allowed. The award of Makuyu Land Disputes Tribunal and the decision of the Central Provincial Appeals Committee are hereby set aside. The respondents claim in the Tribunal is dismissed with costs to the appellant.

Dated and Delivered at Nyeri this 29th day of November 2013

A. OMBWAYO

JUDGE



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