



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MACHAKOS**  
**ELC APPEAL NO.163 OF 2010**

**WANJIRU WAIRAGU WANJOHI ..... APPELLANT**

**VERSUS**

**KANUNU KAURRAI ..... RESPONDENT**

**J U D G M E N T**

1. This is an appeal arising from the decision of the Provincial Land Dispute Award. The Appellant being dissatisfied with the award of the Appeals Committee lodged the instant appeal parading 12 grounds of mixed facts and law under Section 8(9) of LDT Acts repealed. This court can only deal with issues of law. All issues of law gravitate around the core issue of jurisdiction of both the first and the second lawyer in handling of the instant dispute.

2. The Appellant brief case is that her late husband bought Ngong/Ngong/1143 in 1966 and same was transferred to him on 29.5.1968 when the title cited was issued. The late appellant husband passed on in 1989 and in 2008 the suit land was transmitted to the beneficiaries via succession process and shared the same giving rise to various other title deeds now held by the 8 beneficiaries.

3. In August 2009 via LDT case No.T.C.512/08/09 the Respondent filed the claim over the suit land in which the tribunal ordered 4 acres be excised and given to Respondent from the suit land. This prompted the filing of appeal No.74/09 to the Provincial Appeals Committee at Nakuru challenging the award. The aforesaid appeal was upheld despite the fact that the grounds of appeal raised was want of jurisdiction.

4. The Appellant's core claim is that the claim was not within the mandate of the Land Disputes Tribunal under Section 3 of LDT Act now repealed as it was neither sub division nor boundary issue; claim to occupy or work no land or claim for trespass. The dispute was founded on sale agreement in which the Appellant's husband purchased the suit land from the Respondent. In any event the claim was time barred as it was brought after 40 years from the date of sale of land.

5. The Respondent is of different view. The Respondent avers that the claim was based on encroachment of a portion of Respondent land which amounted to trespass which is within the mandate of the tribunal. After going through the materials before the court and the submissions by the parties, it is undisputed that the claim arose out of the sale transaction between the appellant's deceased husband and the Respondent way back in 1966 over suit land.

6. The suit land was occupied and developed by the Appellant's family for over 40 years. Until the Appellant husband died in 1989, there was no claim over the suit land. The land was transmitted and shared to the 8 beneficiaries. The Respondent lodged claim in which he was awarded 4 acres of the suit

land. The provisions of Section 3 of the LDT Act now repealed lists the issues which could be handled by the tribunal namely;

- Subdivision and or determination of the boundaries to land
- Right to occupy or work on land and
- Trespass to land.

7. In the instant suit, none of the Respondent claim land within the above 3 issues. The claim was that the land paid for was 4 acres but the Appellant got 6 acres. The claim for excess land was even under Section 7 of Limitations Act Cap 22 time barred. The District Tribunal had no jurisdiction to entertain the claim and so is the Provincial Appeals Committee. The court thus finds the appeal has merit and same is allowed with costs.

**Dated and Delivered at Machakos, this 13<sup>th</sup> day of February, 2015.**

**CHARLES KARIUKI**

**JUDGE**