

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL NO. 95 OF 2007

CHARLES KIMOTHONGURE.....APPELLANT

VERSUS

PETER NDUNGU GACHOKA.....RESPONDENT

JUDGMENT

PETER NDUNGU GACHOKA, the Respondent herein, filed a complaint before the Tetu Land Disputes Tribunal claiming to be entitled to a portion excised from L.R.no.Thegenge/Kihora/210, a parcel of land registered in the name of **CHARLES KIMOTHONGURE**, the Appellant herein. The Land Disputes Tribunal heard the dispute and in the end the tribunal awarded the Respondent 1.5 acres to be excised from L.R.no.Thegenge/Kihora/210. Being dissatisfied with the aforesaid decision, the Appellant preferred an appeal before the Provincial Land Disputes Appeals Committee. The appeals committee heard the appeal and had it dismissed thus affirming the decision of the Tetu Land Disputes Tribunal. In essence the Appellant and the Respondent were to each have 1.5 acres of L.R.no.Thegenge/Kihora/210. Being further aggrieved, the appellant filed this appeal.

On appeal, the Appellant put forward the following grounds:

1. **The learned members of the tribunal erred in law and in fact in dealing with a case involving a first registration which has not within the jurisdiction of the tribunal.**
2. **The learned members of the tribunal erred in law and in fact in entertaining issues of trust which the tribunal had no jurisdiction.**
3. **The learned members of the tribunal erred in law and in fact in not appreciating that the tribunal had no jurisdiction to hear or determine a suit of this nature.**

When the appeal came up for hearing, learned counsels recorded a consent order to have the appeal determined by written submissions. I have considered the rival submissions. Though the appellant has listed three grounds, a critical look at those grounds will reveal that the gist of the appellant's appeal is the question of jurisdiction. The appellant argues that the Land Disputes Tribunal and the Appeals committee did not have jurisdiction to hear and determine a dispute based on trust. It is also argued that the two bodies did not have jurisdiction to determine a dispute over title to land. The respondent on the other hand argued that since the dispute related to a customary trust, then the Land Disputes Tribunal and the Appeals committee had jurisdiction to entertain and determine the same.

It is not in dispute that the Land Disputes Tribunal and the Appeals Committee heard and determined a dispute based on trust. The law does not distinguish between statutory trust and customary trust. The bottom line is that the claim is based on trust. Being of the above view, it is obvious that the Land Disputes Tribunal and the Appeals committee heard and determined a dispute they did not have jurisdiction. Whatever way one looked at the decision, at the end of the whole process, title L.R.no.Thegenge/Kihora/210 will have to be interfered with by sub-division. The Land Disputes Tribunal and the Appeals Committee had no power to make awards which has the effect of interfering with title to land.

In the end, I find the appeal to be meritorious. I allow the same as prayed. Consequently, Judgment of the Provincial Land Disputes Appeals committee made on 3rd March 2007 and that of the

Land Disputes Tribunal are set aside. The appellant is awarded costs of the Appeal.

Dated, Signed and delivered in open court this 21st day of February, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Mr. Kiboi holding brief for Mr. Mwangi for Appellant

N/A for Mr. Karweru for Respondent with Notice