



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL APPEAL NO. 88 OF 2006

WILFRED WARUI KIBUBA.....APPELLANT

VERSUS

MWENJERI KIBUBA.....RESPONDENT

JUDGMENT

This Judgment is the result of the appeal filed by **Wilfred Warui Kibuba**, the Appellant herein, against the decision of the Mathioya Land Disputes Tribunal delivered on 21st November, 2006 vide Mathioya L.D.T no.16 of 2005. In the aforesaid decision, the Land Disputes Tribunal made an award directing the appellant to transfer 2 ½ acres to be excised from Loc.14/Kairo/1193 to **Mwenjeri Kibura**, the Respondent herein. Being dissatisfied with the aforesaid decision the Appellant filed this appeal. When the appeal came up for hearing, learned counsels appearing in the matter recorded a consent order to have the appeal disposed of by oral submissions.

Before delving deeper into the merits or otherwise of the appeal, let me set out in brief the case that was before Land Disputes Tribunal. The recorded evidence shows that the Respondent filed a complaint before the Mathioya Land Disputes Tribunal claiming to be entitled to inherit 2 ½ acres to be excised from Loc.14/Kairo/1193 a parcel of land registered in the name of the Appellant. The dispute was heard by the Land Disputes Tribunal and in the end the Respondent was awarded 2 ½ acres.

On appeal, the Appellant put forward one main ground, that is to say that the Mathioya Land Disputes Tribunal had no jurisdiction to hear and determine a dispute over title to land. Mr. Simiyu, learned advocate for the appellant urged this court to find that the Land Disputes Tribunal acted in excess of its jurisdiction under **Section 3(1)** of the **Land Disputes Tribunals Act no. 18 of 1990**. Mr. Gachimu, learned advocate for the Respondent conceded that the Land Disputes Tribunal did not have jurisdiction to entertain the dispute. He was of the further view that the Appellant should have filed an appeal before this court. Mr. Gachimu was of the view that this appeal is incompetently before this court hence it should be struck out. Let me start with the last submission by Mr. Gachimu. The appellate jurisdiction of this court was not limited by the provisions of **Section 8(1)** of the **Land Disputes Tribunal Act**. It is argued that the appellant should have first approached the provincial Land Disputes Appeals Committee before this court. The law did not bar an aggrieved party from rushing to this court after concluding from the Land Disputes Tribunal. In the circumstances of this appeal, it would not matter whether the appellant went to the Provincial Land Disputes Appeals Committee because it would not have clothed it with any jurisdiction to entertain an appeal emanating from a decision of the Land Disputes Tribunal which had no jurisdiction to hear and determine the dispute.

Let me now turn my attention to the substance of the Appeal. Basically, the question is whether or not the Land Disputes Tribunal had jurisdiction to hear and determine the dispute. There is no doubt that the Land Disputes Tribunal's jurisdiction is clearly stated under **Section 3(1)** of the **Land Disputes Tribunals Act no.18 of 1990**. The tribunal was not given jurisdiction to hear and determine a dispute in respect of title to land like what happened in this case. The tribunal's decision would lead to the interference of title no. Loc.14/Kairo/1193. With respect, I agree with the submissions of the Appellant's counsel.

In the end, I find the appeal to be well founded. It is allowed as prayed.

1. **Consequently, the decision of the Mathioya Land Disputes Tribunal is set aside.**

2. **The order of Kangema S.R.M's court adopting the decision of the tribunal vide Kangema S.R.M LDT. no.32 of 2006 is set aside.**

3. **Costs of the appeal is given to the appellant.**

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

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J.K.SERGON

JUDGE

In the absence of parties but with notice