



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**ENVIRONMENT AND LAND COURT**  
**CIVIL APPEAL NO.9 OF 2009**

MWAMBURA GIKURU.....APPELLANT

**VERSUS**

JOHN MUCHUNU

DANIEL GIKURU

JOSEPH MURAYA NGERU .....RESPONDENTS

HELLINAH WANJUKU GIKURU

PETER MACHARIA GIKURU

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

**Mwambura Gikuru**, hereinafter referred to the appellant is the registered proprietor of land parcel No.Loc.19/Gacharageini/1042. He was registered as the absolute proprietor on the 7/8/1974 and a land certificate issued.

**John Muchuru Gikuru, Daniel Muchunu Gikuru, Joseph Muraya Ngeru, Hellinah Wanjuku Gikuru** and **Peter Macharia Gikuru** (hereinafter referred to the respondents) are brothers to the appellant.

The respondents filed a claim in the Mathioya Land Disputes Tribunal in respect of parcel No.Loc.19.Gacharageini/1042 for an order that the appellant does give them their portions of the said parcel of land. The appellant's response was that the land belonged to him absolutely.

The Tribunal after hearing parties and making their observations awarded the claim in terms that the land in dispute be subdivided into 6 equal portions and be distributed amongst the brothers and and their sister.

The matter was referred to the appeals committee by the appellant who heard the appeal and found that the land Loc.19/Gacharageini/1042 was ancestral and initially belonged to Gikuru and therefore upheld the decision by elders that the land be shared among Gikuru children as follows;

1. **John Muchunu ID.4281886** - **0.55 acres**
2. **Daniel Muchunu Gikuru ID.3091443** - **0.55 acres**

3. Joseph Muraya Ngeru ID.0513415 - 0.55 acres
4. Hellinah Wanjuku Gikuu ID.3632649 - 0.55 acres
5. Peter Macharia Gikuru - 0.55 acres
6. Mwambura Gikuru ID.3091408 - 0.55 acres

**The parties were to share the costs of surveyors work any aggrieved party was to appeal within 60 days.**

The appellant was aggrieved and filed the appeal herein on the grounds that the decision of the Central Provincial Land Appeals' Committee was illegal incompetent and misconceived as the original Land Disputes Tribunal had no jurisdiction to handle and determine matters of title to land as the matters which the Land Disputes Tribunal can entertain and adjudicate upon are clearly set out in section 3 of the Land Dispute Tribunal Act and the decision was hence ultra-vires. **Moreover** that the appeals committee was wrong in basing its findings on mere occupation by the respondent of the suit land when such occupation was only a license by the appellant. **Lastly**, that the appeals committee erred in failing to appreciate that, the suit land is situated in a settlement area (at Gacharage-ini) and could not as such form part of ancestral or family land.

This court will deal with the issue of jurisdiction only as the question of jurisdiction is a threshold issue and must be determined by any person presiding over any judicial and /or quasi judicial proceedings at the threshold stage. The question of jurisdiction ought to have been raised at the earliest opportunity before the Tribunal and Appeals Committee and should have been determined by the Tribunals. Jurisdiction is everything and without it a Tribunal or Appeals' Committee has no power to proceed and make a decision and any decision made within jurisdiction is a nullity.

Accordingly, section 3 of the Land Disputes Tribunal Act No.18 of 1990(repealed), empowered the Land disputes Tribunal to deal with the issues of division of land, determination of boundaries of land, including land held in common and a claim to occupy and work the land.

The Mathioya Land Disputes Tribunal did not have any jurisdiction to extinguish the appellant's title and order for the land to be shared among the respondents and the appellant. The dispute herein related to customary trust that could only be adjudicated upon by the the courts. The property was registered under Registered Land Act and the dispute touched on land ownership and therefore the Tribunal lacked jurisdiction. On this ground alone the appeal is allowed and the decisions of the Mathioya Land Disputes Tribunal made on the 16/5/2003 and Central Province Appeals' Committee in claim No.Murang'a 1/2004 are hereby set aside with no order as to costs as this is a family dispute.

***Dated, signed and delivered at Nyeri this 21st day of March 2014.***

**A. OMBWAYO**

**JUDGE**