



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL APPEAL NO. 15 OF 2005**

SOSPETER NJIRU WAMBUGO .....APPELLANT

VERSUS

RAEL GACHONI WAMBUGU..... RESPONDENT

**(An Appeal from the Judgment of HON. M. WACHIRA – CM sitting at EMBU in SPMCC AWARD CASE NO. 9 OF 2002 delivered on 15/7/2005).**

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

The Appellant one Sospter Njiru Wambugu filed this appeal against Rael Gachoni Wambugu the Respondent in respect of an award of the Provincial Land Disputes Tribunal read on 157/2004 vide Embu SPMCC award No.9/02. He was aggrieved by the award and filed the following grounds of appeal;

1. The Tribunal erred when it instructed for the sub-division of a registered land an order it had no jurisdiction to make.
2. The Tribunal erred when it gave land to a person who was not a party in the proceedings.
3. The Tribunal erred when it made orders that clearly exceeded its jurisdiction.
4. The Tribunal erred when it gave an order that was contrary to the law.

The issue herein concerns land registered in the name of the Appellant under Land No. KYEI/KIGUMO/1084 measuring 6 acres. The matter before the Tribunal was between Sospeter Njiru Wambugu and Rael Gachoni Wambugu. The award complained of subdivided this land into two portions. One portion of 4 acres was to remain with the Appellant while 2½ acres portion was to go to the Respondent and another (Evangeline). Counsel for both parties agreed and filed written submissions. In her submissions M/s Wairimu states that the Tribunal acted in excess of its jurisdiction. Mr. E. Njiru on the other hand has raised issues with;

- i. Supplementary record having been filed without leave.
- ii. That section 8(9) Land Disputes Act (repealed) was not adhered to.
- iii. The results of the Judicial Review No.31/02 which was filed earlier than this appeal in respect of this matter are unknown.
- iv. Section 3(1) (a) Land Disputes Act gave the Court jurisdiction to deal with the matter at hand.
- v. The appeal does not involve any point of law.

And that because of the above grounds the appeal lacked merit.

This is a 2<sup>nd</sup> appeal. Under section 8(9) of the repealed Land Disputes

Act an appeal from the decision of the Provincial Appeals Tribunal to the High Court would only be on

points of law. Such an appeal would not be admitted if it did not involve an issue of Law. This appeal is challenging the jurisdiction of the Tribunal. Jurisdiction is an issue of Law and that's why this appeal was admitted. The judge was satisfied that was the case.

I have called for Embu High Court Civil Misc. application No.31/02 which was a Judicial Review application. Though the application was filed nothing happened on the file. It was never pursued. The same has been closed. And that being the case this appeal cannot be said to be *res judicata*. On 19/7/2011 and in the presence of both Counsel herein this Court by consent of Counsel granted Leave to the Appellants to file a supplementary record of appeal. It is therefore not correct to say that it was filed without **leave**. The claim before the Tribunal was that the Respondent was registered on this land in trust for the mother and sisters. It was not therefore an issue of claim to occupy or work land. Had it been a claim under the former section 3(a), (b) of the Land Disputes Act then the Tribunal would not have declared the 2½ acres to be registered in the names of Rael Gachoni Wambugu and Evangeline Igoki Wambugu (Respondent). This is what the decree reads;

**IT IS HEREBY ORDERED:**

- a. *The District Land Surveyor and the Land Registrar Embu to sub-divide land parcel No.Kyeni/Kigumo/1084 which is 6½ acres into two portions of 2½ acres to be registered jointly in the name for Rael Gachoni Wambugu and Evangeline Igoki Wambugu and the balance of 4 acres to be left in the name of the Plaintiff (Sospeter Njiru).*
- b. *The Court Executive Officer is authorized to sign all the documents related to this land to enable the above transactions.*

The Tribunal interfered with the registered title of the Appellant by ordering it to be subdivided into two portions, hence creating two titles. That action did not fall under the mandate of the Tribunal under section 3(1) of the Land Dispute Tribunal Act. The Tribunal therefore acted in excess of its jurisdiction. The parties ought to have been informed of where to go to argue their case. Finally Evageline was not a party to those proceedings and could not have been given land. The decision of the Tribunal cannot be allowed to stand. I allow the appeal, and vacate the awards of both Tribunals and the Judgment of the Chief Magistrate's Court in Embu Award No.9 of 2002. Each party to bear his/her own costs.

**DATED SIGNED, AND DELIVERED IN OPEN COURT AT EMBU THIS 4<sup>TH</sup> DAY OF APRIL 2014.**

**H.I. ONG'UDI**

**J U D G E**

**In the presence of:-**

**M/s Wairimu for Appellant**

**Appellant**

**Njue – C/c**