



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**CIVIL APPEAL NO. 53 OF 2011**

**JESII NYAGA E.**  
**KARUAGI.....APPELLANT**

**VERSUS**

**RALPLH KIVUTI NJOKA.....1ST**  
**RESPONDENT**

**CHAIRMAN PROVINCIAL LAND DISPUTE APPEALS COMMITTEE EMBU.....2ND**  
**RESPONDENT**

*(Being an Appeal from the undated decision of the Provincial Land Disputes Appeals Committee in Case No. 52 of 2010 Adopted in Award No. 12 of 2010 on 20/4/2011 )*

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

JESII NYAGA E. KARUAGI the appellant was the respondent before the Provincial Lands Disputes Appeal Committee while Ralph Kivuti Njoka was the appellant. The appeals committee heard the appeal and delivered an award on an undisclosed date. In its undated award the committee ordered the appellant herein to transfer to the respondent five (5) acres out of land No. KYENI/KIGUMO/5657. The appellant was aggrieved by the decision and filed the present appeal raising the following five (5) grounds:-

1. *The Provincial Lands Disputes Appeals Committee erred in both points of law and in fact by determining that the land in dispute was a family land an issue outside their mandate under Section 3 of the Land Dispute Tribunals Act (No. 19 of 1990).*
2. *The Provincial Lands Disputes Appeals Committee erred in both points of law and in fact by conducting a trial instead of conducting an appeal.*
3. *The Provincial Lands Disputes Appeals Committee erred in both points of law and in fact in that it lacked jurisdiction and acted illegally in determining the issues relating to suit land as the 1st respondent's claim was of customary right over a land to which he is the registered owner having absolute and indefeasible rights.*
4. *The Provincial Lands Disputes Appeals Committee erred in both points of law and in fact by disregarding the decision of the District Land Tribunal which had rightly found that the 1st respondent should file the matter in the High Court since the land is registered under his names.*
5. *The Provincial Lands Disputes Appeals Committee erred in both points of law and in fact by arriving at a decision that he transfers 5 acres from land parcel No. KYENI/KIGUMO/5657*

***against the weight of the evidence and without any jurisdiction.***

The appeal raises pure points of law. Both Mr. Ithiga for the appellant and the 1st respondent agreed to dispose of the appeal by written submissions which they filed.

Brief facts of this case show that the respondent filed a claim before the Embu Land Disputes Tribunal claiming five (5) acres of land from the appellant who is his brother. He claimed that his father had instructed the appellant to give him the five (5) acres of land. The land KYENI/KIGUMO/5657 is registered in the names of the appellant.

The Embu Land Disputes Tribunal heard the matter and advised the parties to file their matter in the High Court. The respondent was dissatisfied and filed an appeal at the Provincial Land Disputes Committee. The said committee heard the matter afresh and made various findings:-

- ***The appellant and respondent are brothers.***
- ***The land in dispute is a family land.***
- ***The respondent has already transferred five acres to Obadiah Njagi who is another brother to the appellant as it was said by their father leaving five (5) acres not transferred to Ralph Kivuti Njoka five (5) acres, Obadiah Njagi (5) acres and the balance of ten (10) to remain in the name of Jese Nyaga E. Karuagi.***
- ***The respondent had initially agreed to give the appellant five (5) acres but changed his mind afterwards.***

It then allowed the appeal and dismissed the Ruling of the Embu Land District Tribunal. It went further and ordered that the appellant transfers five (5) acres of land to the respondent.

I will consolidate all the grounds of appeal raised and just deal with one issue which is whether the Provincial Land Disputes Committee had jurisdiction to do all the things it did. There is no dispute that the suit land is registered under the Registered Land Act (now repealed). The Land District Tribunal derived its mandate from Section 3(1) of the Land Disputes Tribunal Act No. 18/1990 which provided:-

***“Subject to this Act all cases of a civil nature involving as dispute as to:***

***(a) a claim to occupy or work land or***

***(b) Trespass to land shall be heard and determined by the Tribunal established under Section 4.***

The Embu Land Disputes Tribunal read these provisions well and declined to determine the matter. What the respondent was claiming was actually an issue of trust, which the Tribunal had no jurisdiction to deal with.

The respondent moved to the Appeals committee on appeal. The said committee did not hear an appeal but heard the matter afresh. Section 8 of the Land Dispute Tribunal Act provided for procedures on appeals whether to the High Court or to the appeals committee. Section 8(6) provided thus:-

***“At the hearing of the appeal the party bringing the appeal shall begin”.***

Section 8(7) provided thus:-

***“After giving each party an opportunity to state his case the Appeals Committee shall determine the appeal giving reasons for its decision provided that the committee may in its discretion permit the party appealing to reply to the other party's submission if that submission contains any new matter not previously introduced at the hearing or on the appeal.”***

First of all the Appeals Committee did not give any reasons for finding that the Embu Land District

Tribunal had erred in finding that it lacked jurisdiction to deal with the case. The appeal was for it to deal with that decision and not to hear the case afresh. And as the Embu Land Disputes Tribunal lacked jurisdiction, by extension the Appeals Committee lacked jurisdiction to deal with issues of trust and title to land.

In the case of **WAMWEA VS CATHOLIC DIOCESE OF MURANGA REGISTERED TRUSTEES [2003] KLR 389** the court held that Land District Tribunals and Provincial Land Disputes Appeals Committee lacked jurisdiction to deal with issues of interest and titles to registered land. Ordering the appellant to transfer five (5) acres from his registered land amounted to interference with title to registered land.

There are many decisions where the issue of the jurisdiction of the Land District Tribunals and the Appeals committees on matters of interest/title to land have been discussed e.g.

1. **REPUBLIC VS CHAIRMAN LAND DISTRICT TRIBUNAL KITUI WEST DISTRICT & 2 OTHERS Machakos Civil Application No. 260/2010**
2. **REPUBLIC VS THE NAVAKHOLO LAND DISTRICT TRIBUNAL & 4 OTHER Kakamega Judicial Review No. 28/2010.**

The respondent has to file his claim before a court with competent jurisdiction. My finding is therefore that the Appeals committee (2nd respondent) had no jurisdiction to make the orders it did. The orders cannot therefore be left to stand.

I allow the appeal and set aside the undated decision of the Provincial Land Disputes Appeals Committee and read by the court on 20th April 2011. I substitute it with an order dismissing the respondent's appeal before the provincial Land Disputes Appeals Committee.

Costs of the appeal to be borne by the respondent. For the appeal at the Provincial Lands Appeal Committee each party will bear his own costs.

Right of appeal explained.

**DELIVERED, SIGNED AND DATED AT EMBU THIS 11TH DAY OF JUNE 2013.**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of:-**

**Ms. Muthoni for Ithiga for Appellant**

**1st Respondent**

**Appellant**

**Njue CC**