



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
E & L CASE NO. 36 OF 2009

M'KIRIINYA M'IREA.....APPELLANT

VERSUS

STEPHEN KIREMA M'IREA.....RESPONDENT

(Being an appeal against the Provincial Appeals Committee decision Dated 24.3.2009 in Provincial Land Dispute Appeals Committee Case No. 29 of 2009)

JUDGMENT

The appellant herein being dissatisfied with the decision of the Appeals Committee dated 24.3.09 has appealed against the same and has relied on the following grounds:

- 1. The Provincial Appeals Committee erred in law in not considering that the District Lands Tribunal Meru Central District had no jurisdiction to award ½ of Land Parcel No. KIIRUA/NAARI-MAITEI/167 to the respondent.**
- 2. The Provincial Appeals Committee – Embu erred in law in not giving the appellant a chance to urge his appeal.**
- 3. The Provincial Appeals Committee – Embu erred in law in considering the erroneous evidence and therefore arrived at an erroneous decision.**
- 4. The whole of the Provincial Appeals Committee – Embu decision is against the law.**

The appellant prays that the whole of the decision of the Provincial Appeals Committee at Embu be set aside and/ or quashed with the consequence that the appeal be allowed with costs to the appellant.

The respondent responded as follows:

1. The decision of the Provincial Appeals Committee as pronounced by the Chief Magistrate's Court in Meru was in accordance with the law and should, therefore, be upheld.
2. As the appellant was only intent on subjecting him to suffering for no good reason, the appeal should be dismissed. This is the position that the respondent adopted throughout the appeal proceedings.

During the hearing of the appeal the appellant restated the grounds contained in the Memorandum of Appeal. The appellant argued that the Land District Tribunal, Meru Central had no jurisdiction in the first place to award half of the suit land to the respondent. This being the case, the Provincial Appeals Committee should have found that the Land Disputes Tribunal had no jurisdiction. The Provincial

Committee had, in other words according to the appellant, no jurisdiction to uphold an illegal award. It was further argued that the Appeals Committee had relied on erroneous extraneous evidence which had not been adduced by the parties.

The appellant preferred 2 authorities, namely;

1. **M'Mbijiwe M'Mutuata Versus Jane Kathanga M'Rukaria, Meru HCA No, 91 of 1997,** and;
2. **Evangeline Nyoroka Versus Sabella Kajuju, Meru HCA No. 50 of 2007.**

Both Cases upheld the principle that where a tribunal has no jurisdiction, a decision emanating therefrom has no legal validity ab initio.

Section 3 (1) of the Land Disputes Tribunal Act stipulates as follows:

“3. (1) Subject to this Act, all cases of civil nature involving a dispute as to:

(a) the division of, or the determination of boundaries to land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land shall be heard and determined by a Tribunal established under section 4.”

As pointed out by the Hon. Lady Justice Kasango, J, in Meru HCA No.91 of 2007 (Supra) the jurisdiction of the District Land Disputes Tribunal is limited to considering matters relating to respass, boundary disputes and use of land and does not extend to making orders relating to titles

As categorically stated by the Hon. Justice Nyarangi, J.A in the Court of Appeal case of Owners of the Mottor Vessle “Lillians” Versus Caltex Oil Kenya Ltd [1989] K LR: “Jurisdiction is everything. Without it, a Court has no power to make one more step.”

I pity the respondent that he will be affected by the decision of the Land Disputes Tribunal which had been arrived at when the tribunal had no jurisdiction. I, however, take the view that jurisdiction is not a technicality that can be cured by the constitutional and Statutory provisions which require a Court to eschew undue procedural technicalities. In this case the Provincial Appeals Tribunal had no jurisdiction to uphold an illegal award. In the circumstances, I grant the following orders:

1. **The award of the Meru Central District Land Disputes Tribunal Case No.43 of 2007 and the decision of the Provincial Land Appeals Committee Case No.29/2009 at Embu relating to Land Parcel No.KIIRUA/NAARI-MAITEI/167 are hereby set aside.**
2. **Costs of this appeal are awarded to the appellant.**

Dated and Delivered in Open Court at Meru this 17th day of September 2013 in the presence of:

Cc Daniel

M'Kiriinya M'Irea – Appellant

Stephen Kirema M'irea – Respondent

Miss E. G. Mwangi for Appellant - Absent

P. M. NJOROGE

JUDGE