



REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAKURU

Civil Appeal 115 of 2008

JAMES THUGE KARIUKI APPELLANT

VERSUS

GEORGE NJUGUNA 1ST RESPONDENT

JAMES KARIUKI WANGOMBE 2ND RESPONDENT

JUDGMENT

James Thuge Kariuki (the appellant) has filed this appeal against **George Njuguna** (1st Respondent) and **James Kariuki Wangombe** (2nd Respondent). The appellant is aggrieved by the decision of the Provincial Land Dispute Appeal Tribunal dated **17th June 2008** in **Appeal No.2 of 2003** on grounds that:

1. The Tribunal erred in entertaining the appeal whereas neither the N’garua Land Dispute Tribunal nor the Provincial Appeal Committee had jurisdiction to entertain the claim.
2. The Committee failed to evaluate the issues that were put before them, and which were not within its mandate and it considered fresh evidence instead of dealing with the appeal.
3. The Committee did not give a reason why it did not follow the decision of the N’garua District Land Tribunal.
4. The Committee erred in awarding the title **No.Laikipia/Kinamba Mithiga Block 1/266** formerly **plot No.266** Njorua Farmers to the 2nd Respondent who was absent during the hearing of the appeal.
5. The Committee erred in making an observation instead of a judgment and failed to conclude that there was no statement of claim filed and served upon the appellant.
6. Both N’garua Land Dispute Tribunal and the Provincial Land Dispute Tribunal Appeal Committee’s decision were ultra vires and that 2nd Respondent was fraudulently registered as the proprietor holding the land in trust for appellant.

Mr. Bosire who held brief for Mr. Mburu on behalf of the appellant did not argue the appeal, all he stated was that, in the absence of the Respondents, the appeal should be allowed with costs.

When the matter went before the Ngarua Land Dispute Tribunal, the complainant was the appellant herein. His complaint was that he had bought one share from Njorua Farmers Company and made all the necessary payments. At the time, he decided to inform the 1st Respondent (who is his brother-in-law) to

buy one share in his (appellant's) names, as he was a member and his was registered as plot B70. Eventually the 1st Respondent sold his share to 2nd Respondent and the appellant remained with his share. Later on the appellant discovered that the 1st Respondent had even sold his share, so that appellant now had no shares with Njorua Farmers.

The 1st Respondent told the Tribunal that the appellant actually sold to him one share. According to him, he and the appellant eventually sold their shares to the 2nd Respondent.

The District Land Disputes Tribunal considered the evidence and made a finding that:

(1) James Thuge Kariuki bought shares from Njorua Farmers Company in 1968 – he only had one share. He requested his brother-in-law, (the 1st Respondent herein) to add one share in his name, and they were issued with plot No.B70 comprising two shares.

In 1986, the 1st Respondent (George) sold his share to the 2nd Respondent. The appellant was called to effect the transfer and he only transferred one share i.e. 267 Njorua. After that transfer, plot B70 was divided into plot 266 and 267 Njorua Farmers, meaning that the appellant was left with plot 266.

When the matter went on appeal before the Appeals Committee, the two present respondents challenged the decision. The Committee's finding were that the appellant James Kariuki Thuge, had bought shares from Njorua Farmers Company as early as 1968 and was allocated plot No.270. He then requested the 1st Respondent to add one more share through him and this present 1st Respondent later bought another share from an original member, thus enabling him to acquire 2 shares i.e. 266 and 267. The 1st Respondent, George, later decided to sell one share, so one share was left and this was later disposed off by the appellant without his consent.

The Committee then held that the parcel No.266 actually belonged to George (the 1st Respondent herein) and it set aside the decision by the Ngarua District Land Disputes Tribunal.

From the record, it is not clear where the Appeals Committee got the information that 1st Respondent (George) had bought another share from an original member (whose identity is not disclosed) nor is it determinable how they decided to attribute the two plots to the 1st appellant, when the evidence clearly shows the existence of only two shares in respect of appellant and 1st Respondent, and that it is 1st Respondent who had sold his share.

It is also curious, what record the Appeals Committee considered when the evidence before the District Tribunal clearly given by the 2nd Respondent (James Kariuki) was that although he purportedly bought a share from the appellant, it was actually the 1st Respondent whom he dealt with and whom he gave money for that purchase. Further that even at the time of buying, he never saw the appellant on the plot. I think the Ngarua District Lands Tribunal had properly considered the issues and made a finding supported by the evidence presented to court. The Appeals Committee seems to have considered other evidence not forming part of the record in arriving at its conclusion. Certainly its jurisdiction on appeal was limited to dealing with the evidence on record and not admitting other fresh evidence from undisclosed sources. It is on account of this that the appeal is allowed and the decision by the Provincial Appeal Committee be and is hereby set aside. Costs of the appeal are awarded to the appellant

Delivered and dated this 30th day of July, 2012 at Nakuru.

**H.A. OMONDI
JUDGE**