



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**Civil Appeal 120 of 2008**

**KAMAU KIMAMI.....APPELLANT**

**VERSUS**

**LUCY MUGURE KAMAU.....RESPONDENT**

*(From the decision of the Nyeri Provincial Land appeal Committee dated 13<sup>th</sup> June, 2008 based on the decision of*

*Kiambu Land Disputes Tribunal's decision in Tribunal Case No. 3 of 2003).*

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

This appeal arises from a decision dated 8<sup>th</sup> November, 2002 made originally by the Kiambu District Land Disputes Tribunal in its land case No. 16/20/56/2002. The Tribunal's award read as follows: -

***“This panel of elders listening to both parties and the witnesses and having viewed the land in dispute, it was unanimously agreed without any doubt that the Claimant, Lucy Mugure Kamau, and the Objector, Kamau Kamami be jointly (registered) in the title of Land; Kiambaa/Thimbugua/3745. The Land Registrar is ordered to implement the same.”***

The Plaintiff in whose favour the Tribunal had awarded half the land was Lucy Mugure Kamau who in this appeal is the Respondent. Kamau Kamami in whose name the land was at the time registered, was aggrieved by the Tribunal's decision above. He appealed to the Nyeri Provincial Land Appeal committee in Committee Land appeal No. 3 of 2003.

The Committee in the absence of the appellant, decided the appeal making the following decision dated 13<sup>th</sup> June, 2007.

***“1. Kamau Kamami the appellant should have a joint title deed with the Respondent, Lucy Mugure Kamau to avoid him selling the said property.***

***2. Appeal allowed for a period of 30 days.***

***3. Land Registrar to facilitate the conveyancing thereof.”***

It is clear that the Committee ordered that the Appellant and the Respondent should hold the title jointly. The decision was accordingly not any different than that of the Kiambu Land Disputes Tribunal which

itself had ordered that the land be equally divided between the two parties.

What however, is of greater importance is that although the land was fully registered in the name of the appellant Kamau Kamami, the Kiambu Land Dispute Tribunal and the Nyeri Provincial Land Appeals Committee ordered that the absolute interest in the registered land be subdivided to and/or be shared by Lucy Mugure Kamau.

The Appellant to this court Kamau Kamami through his advocate Mr. Kinuthia, argued in this appeal that both tribunals had no jurisdiction to interfere with a beneficial interest in registered land. He accordingly, termed the decisions as beyond the tribunals authority and accordingly, invalid. He referred to the powers of the tribunals as donated in section 3(1) of the Land Disputes Tribunal Act, Act No. 18 of 1990.

I have carefully considered the grounds of appeal herein. To the extent I understand the jurisdiction donated by the said section 3(1) of the above Act, the same only gives the tribunal jurisdiction to deal with boundary disputes and the trespass that occurs when a party jumps a boundary. Even then, that raises a conflict with the properly structured powers to determine boundaries given to the Land Registrar, particularly under Section 21 and 22 of the Registered Land Act, Cap 300 of the Laws of Kenya. Furthermore, Section 4 of the Registered Land Act does not appear to give way to any other Tribunal or person to deal with Land registered under the said Act, in so far as it states: -

***“Except as otherwise provided by this Act, no other written law and no practice or procedure relating to land shall apply to land registered under this Act so far as it is inconsistent with this Act.”***

It can, therefore, be said with certainty that the jurisdiction donated to the Tribunals created under the Land Disputes Tribunal Act, is of doubtful standing. This is besides the Tribunals’ numerous unlawful exercise of authority and power which it (they) do not have. I have had opportunity before, to state that the said Land Disputes Tribunal Act, Act 18 of 1990, was promulgated in a hurry and probably under the then existing political influence. It was definitely not properly nor thoroughly thought out of or polished. In my view, and with great respect, it has cost citizens much loss in money and time. It has been heavily misapplied by the relevant tribunals. It is probably a high time for the Act to be repealed to avoid further economic, social and judicial loss.

Having said what I have said above, it is my finding that both Kiambu Land Disputes Tribunal and Nyeri Provincial Land Appeals Committee had no jurisdiction to order for either subdivision or joint holding of the piece of land registered as Kiambaa/Thimbigua/3745. The Tribunal and Committees orders were accordingly without power and jurisdiction and are declared null and void.

The effect of the court’s above finding is that the land remains as originally registered in the name of Kamau Kamami. This appeal has merit therefore. It is allowed. In view of the relationships of the parties and the circumstances of the case, the court’s order as to costs is that each party should bear own costs. Orders accordingly.

Dated and Delivered at Nairobi this 26th day of September, 2012.

.....  
**D A ONYANCHA**  
**JUDGE**