



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**HIGH COURT CIVIL APPEAL CASE NO. 9 OF 2008**  
**CONSOLIDATED WITH**  
**HIGH COURT CIVIL APPEAL CASE NO. 1 OF 2008**  
**IN THE MATTER OF LAND DISPUTES TRIBUNAL ACT 1990**  
**AND**

*(In the matter of an appeal to the High Court against the decision of the Eastern Province Land  
Dispute Appeals Committee sitting*

*at Embu being Appeal No. 52 of 2004 being CM L.D.T. No. 79 of 2004 at Meru)*

JOSEPH KIRIMI .....APPELLANT

VERSUS

ISABELLA KANUGU RIUNGU.....RESPONDENT

**JUDGMENT**

Isabella Kanugu Riungu (**Isabella**) filed a claim before the Meru Central District Land Dispute Tribunal in Case No. 62 of 2004. The claim as I understand it from the proceedings was that Isabella was claiming the use of parcel number *Kibirichia/454* (suit property) which her deceased father had indicated she had a right to use. She stated that her deceased father had requested her brother, the appellant, Joseph Kirimi (**Kirimi**) to allow her to continue using that portion of land. However, Kirimi subsequently began to restrict her use of that portion of land. Her testimony was supported by another brother of hers and Kirimi and two other witnesses. They testified that the father of both Isabella and Kirimi had in 1999 before his death given permission to Isabella to continue using the portion of land she had been using. Kirimi stated in evidence that in 1979 before the death of their father, their father had transferred the suit property to him. He is presently the registered owner of that land. The District Land Tribunal in their decision dated 28<sup>th</sup> July 2004 decided as follows:-

1. *Isabella Kanugu Riungu being unmarried and is sister to Joseph Kirimi should continue living in the portion of land given to her by her father Kathuri.*

2. ***Isabella Kanugu Riungu should be given 2 acres which she has been occupying and was given to her by their father.***

Kirimi not being satisfied with that decision filed an appeal before the Provincial Land Appeal Dispute Tribunal in case No. 5 of 2004. The Appeals Committee proceeded to receive fresh evidence from Isabella and Kirimi. Thereafter, they reached the following decision:

***“After hearing submissions from both sides and after asking questions the committee asked the two parties to be left and after a length discussion with the two parties, it was agreed that the appellant, Joseph Kirimi, will give her sister Isabella Kanugu the respondent one acre of land halved from his 8 acres. The land shall be registered in the names of 1) Isabella Kanugu Riungu 2) James Mwiti 3) Lawrence Muriungu 4) Evanson Kinyua. This was arrived at after considering that even trying to make a court award will not stop others from following the appellant, Joseph Kirimi to give them a piece land.”***

That decision by the Appeals Committee is the subject of the two appeals. One is by Isabella and the other is by Kirimi. Both Isabella and Kirimi in their appeals agreed that the Appeals Committee erred in law for having exceeded their jurisdiction as found in section 3 of the Land Dispute Tribunal Act. That Section provides as follows:-

***“3. (1) Subject to this Act, all cases of a 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 can be seen from that section the tribunal is restricted to consider disputes relating to boundary to land, right to occupy land and trespass. The appeal against the decision of the Appeals Committee will succeed for the reason that the Appeal Committee ordered the subdivision of the suit property which order was in excess of their jurisdiction as found in section 3. The tribunal’s acting in excess of their jurisdiction has been the subject of countless number of decisions of the court. In one such case, **Beatrice M’Marete vs. Republic & 3 others** Civil Appeal Case No. 259 of 2000. The Court of Appeal had this to say about the jurisdiction of the Tribunals.

***“In our view, the dispute before the Tribunal did not relate to boundaries, claim to occupy or work the land, but a claim to ownership. Taking into account the provisions of section 3 of the Act and what was before the Tribunal, we are of the view that the Tribunal went beyond its jurisdiction when it purported to award parcels of land registered under Registered Land Act to the appellant. In our view, the Tribunal acted in excess of its jurisdiction.”***

Isabella seeks that the court will uphold the decision of the Meru Central Land Dispute Tribunal. It was argued on behalf of Isabella that that decision did not exceed the jurisdiction of section 3. In as far as the decision gave Isabella the right to occupy the land and to use it, that decision is indeed in keeping with section 3. Kirimi’s learned counsel did not respond to those submissions. This court will uphold the right of Isabella to use the land but it should be noted that Isabella and her witnesses did not state how much

land she uses. The decision of the Appeals Committee although was wrong for having ordered the land be registered in the name of Isabella and two other people, they however seemed to have taken time to discuss the matter with Isabella and Kirimi extensively. Their decision although wrong in law as stated above seemed to embody the consent of the two parties. There was no basis from the evidence upon which the Meru Central District Land Dispute Tribunal decided that Isabella should use two acres of the suit property. Isabella's learned counsel Mr. Mwirigi in further argument faulted the Appeals Committee for having allowed parties to adduce fresh evidence when what they were considering was an appeal. Appeal is defined in the Black's Law Dictionary as follows:-

***“A proceeding undertaken to have a decision reconsidered by a higher authority; especially the submissions of a lower court's or agencies decision to a higher court for review and possible reversal.”***

From that definition, it can be seen that an appellant court either reviews or reverses a decision of the lower court. To review or reverse such a decision the appellant court can only consider the very same evidence that was before the lower court unless the rules allow for fresh evidence to be adduced. In this case, the Land Dispute Tribunal Act does not permit fresh evidence to be adduced. The Appeals Committee therefore erred to have permitted fresh evidence to be adduced. Coming back to the area of land that Isabella should use on the suit property, I am of the view that she should use one acre. I therefore grant the following orders:-

- 1. The decision dated 23<sup>rd</sup> May 2006 in Eastern Province Land Dispute Appeals Committee in case No. 52 of 2004 is hereby set aside and is substituted with the order that Isabella Kanugu Riungu has a right to occupy and work on one acre of L.R. No. Kibirichia/454.***
- 2. Both parties being related to each other there shall be no orders as to costs in respect of both appeals.***

**Dated, signed and delivered at Meru this 18<sup>th</sup> day of May 2011.**

**MARY KASANGO  
JUDGE**