



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**CIVIL APPEAL NO. 108 OF 2008**

**AUSTINE KIHARA WAREMA..... APPELLANT**

**VERSUS**

**GEORGE GITUKU NYAMU..... RESPONDENT**

***(Appeal arising from the decision of Laikipia Lands Disputes Appeal Tribunal case Appeal No. 89 of 2007 dated 14<sup>th</sup> October 2008)***

**JUDGMENT**

On 14<sup>th</sup> October 2008, the Rift Valley Province Land Disputes Appeal Committee delivered its judgment which in effect directed the Laikipia District Land Registrar to amend the Registry Index Map (RIM) to conform to the present boundary margin as on the ground. Austine Kihara Warema, the Appellant was dissatisfied hence this appeal. On appeal the Appellant put forward the following grounds in his Memorandum of Appeal.

- 1. That the appeals tribunal erred in law in purporting to sit on appeal against a judgment of the court vide Nanyuki SPMC award case no. 31 of 2007, a mater clearly re-judicata.***
- 2. That the appeals tribunal erred in law in purporting to order amendment of registry index map R.I.M. a jurisdiction not vested in the tribunal but only the high court under cap. 300 laws of Kenya.***
- 3. That the appeals tribunal erred in law in adjudicating on a matter outside its jurisdiction.***

When the appeal came up for hearing, George Gituku Nyamu the Respondent herein and his counsel failed to turn up despite having been served with a hearing notice hence the appeal proceeded for hearing ex parte. The recorded evidence shows that the Appellant and the Respondent own parcels of land which are adjacent to each other within Gatarakwa scheme. The Respondent filed a complaint before the Laikipia Land Disputes Tribunal claiming that his land was less by 1 acre. He complained that his land was within the parcel of land owned by the Appellant. He sought for the intervention of the Land Disputes Tribunal to order for the determination of the boundaries between the two parcels of land. The Land Disputes Tribunal considered the complaint and came to the conclusion that the boundary between L.R. no. Euasonyiro/Suguroi Block VI/168 and Euasonyiro/Suguroi Block VI/5 should remain as it is. The Respondent was dissatisfied with the land Disputes Tribunal. He then preferred an appeal to the Rift Valley Provincial Land Disputes Appeals Committee. He succeeded on appeal. The appeal was aggrieved hence this appeal. The Provincial land Disputes Appeal's tribunal ordered the boundary to remain the same and directed the registry Index Map (RIM) to be amended to reflect the ground occupation. Meanwhile the Divisional Land Disputes Tribunal was adopted as the judgment of the Nanyuki Senior Principal Magistrate's court on 28<sup>th</sup> September 2007. The appeal before the Provincial

Land Disputes Appeals committee was filed on 8<sup>th</sup> October 2007. by that time the Divisional Land Disputes Tribunal's decision had been adopted. On appeal the Appellant argued that the decision of the Provincial Appeals Committee did not have jurisdiction to overturn the adoptive decision. With respect I agree with the Appellant's submission that the Appeals Committee acted beyond jurisdiction when it purported to overturn the adoptive order. The Appeal's Committee's decision must be overturned.

The second ground argued on appeal related to the Appeal tribunal's decision to order the Land Registrar to amend the R.I.M. with respect, I agree with the Appellant that tribunal had no jurisdiction to order for the amendment o the Registry Index Map. That power is the preserve of the Land Registrar, this court and in certain case the subordinate court.

In the end I am convinced the Appeal should be allowed which I hereby direct for the avoidance of doubt. The decision of the Rift Valley Provincial Land Disputes Appeals Tribunal is set aside with costs. The decree of the Nanyuki Senior Principal Magistrate's court i.e Award case no. 31 of 2007 is restored hence the same should be executed.

Dated and delivered this 29<sup>th</sup> day of July 2011.

J.K. SERGON  
JUDGE

In open court in the presence of Karweru for the appellant N/A for Njuguna for Respondent.

J.K. SERGON  
JUDGE