



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

**AT NYERI**

**CIVIL APPEAL NO. 50 OF 2007**

**DAN NJOGU KANGI.....APPELLANT**

**VERSUS**

**JEDIDA MUTHONI NJOGU.....RESPONDENT**

*(Being appeal against the Provincial Appeal Tribunal Award dated 3<sup>rd</sup> May 2007)*

**JUDGMENT**

**Dan Njogu Kangi**, the appellant herein, was the registered proprietor of the parcel of land known as **L.R. NO. MUTIRA/KAGUYU/551**. He is also the husband to Jedidah Muthoni Njogu, the Respondent herein. The Respondent filed a complaint before the Kirinyaga Central Division Land Disputes Tribunal claiming to be entitled to 1.5 Hectares to be excised from the parcel of land known as **L.R. NO. MUTIRA/KAGUYU/551**. The tribunal gave the Respondent judgment as prayed. The appellant was aggrieved by the decision hence he preferred an appeal to the Central province Land disputes Appeals Committee. The Appeals Tribunal dismissed the Appeal. The Appellant preferred this Appeal.

On Appeal, the appellant put forward the following grounds in his Memorandum:

1. ***That the Kirinyaga Land disputes Tribunal erred in fact and in law in entertaining a dispute relating to land parcel number MUTIRA/KAGUYU/551 registered in the name of the Appellant as a first registration in 1979.***
2. ***That the Kirinyaga Land Disputes tribunal acted without jurisdiction in purporting to hear and determine a matter outside the provisions of the Land Disputes Act (Act No. 18 of 1999 in that the claim by the Respondent relates to Title to land and consequently the proceedings and award made by the tribunal are a nullity.***
3. ***The tribunal erred in fact and in law in failing to observe the clear provisions of the law regarding procedure in that no statement of claim was filed and served upon the appellant as required by law.***
4. ***The tribunal erred in fact and in law in that the proceedings ...the tribunal involved matters of natural justice.***
5. ***The award by the Provincial Appeals were against the weight of the evidence adduced.***

The most serious ground which commends itself is that the tribunal and the Appeals Committee had no jurisdiction to hear and determine a dispute relating to title to land. The Respondent is of the view that the two tribunals had jurisdiction to hear and determine the dispute. Both the Appellant and the respondent agree that the tribunal's decision would lead to the parcel of land known as **L.R. NO. MUTIRA/KAGUYU/551** being subdivided into two subdivisions. The title will definitely be close upon

subdivision. The decision will have interfered with the Appellant's proprietary rights as a registered owner. The tribunal was not given jurisdiction to hear and determine disputes relating to title to land. With respect, I agree with the appellant's submission that the tribunal acted without jurisdiction.

The appeal is allowed. The decision of the Provincial Land Disputes appeals Committee dated 3<sup>rd</sup> May 2007 together with the decision of the Principal magistrate's Court adopting the Appeals Committee's decision on 21<sup>st</sup> February 2003 is set aside and vacated.

Costs of the appeal is awarded to the Appellant.

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

**J. K. SERGON**  
**JUDGE**

In open court in the presence of Mr. Kahiga for 2<sup>nd</sup> Respondent and Miss Mwai h/b for Muthigani for Appellant.

**J. K. SERGON**  
**JUDGE**