



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

**AT NYERI**

**CIVIL APPEAL NO. 3 OF 2009**

**HENRY GATHARA GICHINGIRI ..... APPELLANT**

**VERSUS**

**MARGARET WAMUYU GICHINGIRI.....RESPONDENT**

*(Appeal arising from the decision of the Provincial Land Disputes Appeals Committee Central Province  
in claim no. 4A of 2006  
read on 4<sup>th</sup> December 2008.)*

**JUDGMENT**

This judgment is the result of the appeal against the decision of the Provincial Land Disputes Appeals Committee delivered on 4<sup>th</sup> December 2008. Margaret Wamuyu Gichingiri, the Respondent herein, file a complaint before the Mathira Land Disputes Tribunal claiming to be entitled to own a portion of the parcel of land known as L.R. NO. Magutu/Gatei/408. The land is registered in the name of Henry Gathara Gichingiri, the Appellant herein. The Land Disputes Tribunal heard the dispute and in the end it awarded the Respondent ½ an acre to be excised from the aforesaid parcel. The Appellant was unhappy with the decision hence he was prompted to file an appeal before the Central Province Land Disputes Appeals Committee. The Appeals committee heard the appeal dismissed it and proceeded to affirm the decision of the Mathira Land Disputes Tribunal. The appellant was aggrieved hence this appeal.

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

1. ***The Committee erred in law in entertaining a matter outside their jurisdiction.***
2. ***That the Tribunal erred in law in trying to solve a dispute which was strictly based on trust thus acting ultravires its powers.***
3. ***That the tribunal erred in law in dealing with a dispute that revolves around title to land, which is beyond the jurisdiction of the tribunal.***
4. ***That the tribunal erred in law and fact in refusing to admit the appellant evidence and documents in evidence to exhibit that the land parcel Magutu/Gatei/408 allegedly in dispute is on existent.***
5. ***That the grounds cited above make the proceedings before the tribunal a nullity.***

When the appeal came up for hearing, the Respondent did not turn up despite notice hence the appeal proceeded for hearing ex parte. Mr. Kamwenji, learned advocate for the Appellant argued one main ground, that is to say that the Land Dispute's tribunal heard and determined a dispute relating to title to

land and a claim based on trust. It is his submission that the tribunal had no jurisdiction to hear and determine the dispute.

I have perused the proceedings and the decision of the provincial Land Dispute's Appeals Committee. It is obvious that the Appeals made a decision giving the Respondent 0.5 acres to be excised from L.R. no. Magutu/Gatei/408. That decision will obviously lead to the subdivision of the aforesaid parcel hence affecting the proprietary rights of the Appellant as a registered owner. The tribunal did not have jurisdiction to decide a dispute in respect of title to land. Further more there was evidence that title relating to L.R. no. Magutu/Gatei/408 had been closed upon subdivision hence the tribunal made a decision in vain.

On the basis of the above reason I allow the appeal. The Provincial Land Disputes Appeals Committee award plus that of the Mathira Land Disputes Tribunal are set aside with costs to the Appellant.

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

J.K. SERGON  
JUDGE

In open court in the absence of Kwamwenji with notice N/A Respondent.

J.K. SERGON  
JUDGE