



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KAKAMEGA**  
**CIVIL APPEAL NO. 161 OF 2010**

**AGGREY KIBISU LIVETE.....APPELLANT**

**VERSUS**

**RUTH ANDENYO ONZERE.....RESPONDENT**

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

1. The appeal herein is premised on the grounds as follows:-

(i) That the Western Provincial Land Disputes Appeals Committee had no authority in law to pronounce a decision as to the ownership of land parcel No. KAKAMEGA/VIYALO/1317.

(ii) That the said decision having been made by the pannel of five members violated S. 8 (5) of the Land Disputes Tribunal Act No. 18 of 1990.

2. At the hearing, Mr. Kundu, Advocate for the Applicant argued both grounds 1 & 2 of the appeal and referred the court to Section 3 (1) of the Land Disputes Tribunal Act and Section 8 (5) of the same Act.

3. The Respondent was unrepresented. She stood by the decision of the Land Disputes Tribunal.

4. The Provincial Land Disputes Appeals Tribunal Committee decided as follows:

“1. The appeal fails and is dismissed due to lack of new evidence to support the grounds of appeal.

2. The Sabatia Land Disputes Tribunal cause ruling stands as ordered for immediate implementation.

3. The parties to invite the District Surveyor to assist the implementation of the above order and share costs.

4. The parties to keep peace.”

5. The decision of the Provincial Land Disputes Appeals Committee is signed by five members. This contravenes the provisions of section 8 (5) of the Land Disputes Tribunal and which provides for membership of three.

6. It is clear that the panel was improperly and unlawfully constituted and in breach of section 8(5) of the

Land Disputes Tribunal Act.

7. The decision of the Sabatia District Land Disputes Tribunal upheld by the appeals Committee was as follows:-

***“Ruth ANDENYO ONZERE should take possession of her portion on LR. KAKAMEGA/VIYALO/1317 as demarcated on the ground by the late ELLAM AKEMENA MAMESA. The remaining portion on LR/KAKAMEGA/VIYALO/1317 that belonged to the late mama ELISHA MUHALIA should be shared out to three people i.e JAIRUS GUMBIHI, SHEM LIVETE AKEMENA and RUTH ANDEYO ONZERE”***

8. It is clear that the Tribunal decided on the question of land ownership contrary to the provisions of section 3(1) of the Land Disputes Tribunal Act which provides as follows:-

*“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”*

9. The appeal has merit and is allowed. The Sabatia Land Disputes Tribunal and the Western Provincial Appeals Committee decision relating to land parcel No. KAKAMEGA/VIYALO/1317 are both set aside.

10. Each party to bear its own costs.

11. Orders accordingly.

***Delivered, dated and signed in open court on the 8th day of December, 2011.***

**B. THURANIRA JADEN**  
**J U D G E**