



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NYERI

Civil Appeal 56 of 2008

JOSEPH MWANGI KABUTU.....APPELLANT  
VERSUS  
JEMIMAH WAMBURA KIAMA.....RESPONDENT

*(Being appeal from the award of the Provincial Land Disputes Appeal Tribunal  
Central Province in Appeal No. 14 of 2004 delivered on 17<sup>th</sup> July 2008)*

JUDGMENT

This judgment is the outcome of the appeal against the decision of the Provincial Land Disputes Appeals Committee, Central Province vide Appeal No. 14 of 2004 delivered on 17<sup>th</sup> July 2008. The history behind this appeal is short and straightforward. The Respondent herein, **JEMIMAH WAMBURA KIAMA** filed a complaint before the Baricho Land Disputes Tribunal claiming half of the parcel of land known as **L. R. NO. KIINI/KIBINGOTI/NGUGUINI/102** and **L. R. NO. MWEA/MUKIMA** from the registered proprietor, **JOSEPH MWANGI KABUTU**, the appellant herein. The aforesaid tribunal heard the complaint and found the case in favour of the Respondent. The Appellant, being aggrieved filed an appeal before the Central Province Land Disputes Appeals Tribunal. The Provincial Land Disputes Appeals Committee heard the appeal and proceeded to uphold the decision of the Baricho Land Disputes Tribunal. The Appeals Committee's decision was to the effect that the two parcels of land namely **KIINI/KIBINGOTI/NGUGUINI/102** and **L.R. NO. MWEA/MAKIMA** be shared equally between the Appellant and the Respondent. Being further aggrieved, the Appellant preferred this appeal.

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

1. *THAT the Provincial land Disputes Appeals Tribunal erred in law and in fact by allocating the respondent 0.36 hectares of the Appellants land KIINI KIBINGOTI NGUGUINI/102.*
2. *THAT the Provincial land Disputes appeals Tribunal erred in law and in fact by allocating the Appellant 5 acres of the Respondent's land MWEA/MAKIMA.*
3. *THAT the decision of the Provincial Land Disputes Appeals Tribunal was against the law and public policy in that it exceeded its jurisdiction in determining the disposition of the appellant's land contrary to his legal rights as a registered proprietor.*
4. *THAT the decision of the Provincial Land Disputes Appeals Tribunal was against law and public policy and exceeded*

*its jurisdiction in disposing the Respondent's land MWEA/MAKIMA contrary to her legal rights as a proprietor.*

5. *THAT the Provincial Land Disputes Appeals Tribunal's decision therefore amounted to depriving the Appellant his land against his will and without due process of the law and is therefore null and void.*
6. *THAT the Provincial Land Disputes Appeals Tribunal exceeded their powers in making orders for cancellation and rectification of Titles relating to land registered under the registered Land Act (cap 300) of the Laws of Kenya.*
7. *THAT the Provincial Land Disputes Appeals Tribunal lacks jurisdiction to hear the matter touching to the Title and the entire proceedings was in contravention of section 3 of the Land Disputes tribunal Act No. 18 of 1990.*
8. *THAT the Provincial Land Disputes Appeals Tribunal lacks jurisdiction to adjudicate matters of title as it contravened section 159 of the Registered Land Act (cap 300) of the Laws of Kenya.*
9. *THAT the appellant contends that the entire proceedings were a nullity as the same was not in accordance with Land Disputes Tribunal Act.*

A critical examination of the above mentioned grounds of appeal will reveal that the most serious issue touches on the jurisdiction of both the Land Disputes Tribunal and the Appeals Committee. It is the submission of the Appellant that the tribunals had no jurisdiction to hear and determine a dispute over title to land as it happened in this case. When this appeal came up for hearing, the Respondent did not turn up despite having been served with a hearing notice – as shown in the affidavit of service of James Mwangi. The Respondent did not also file her submissions in compliance with this court's order of 23<sup>rd</sup> November 2009. I have considered the submissions filed by the Appellant without the Respondent's input. Under *Section 3* of the Land Disputes Tribunals Act No. 18 of 1990, the Land Disputes Tribunal is mandated to handle the following cases:

- (i) Division of or the determination of boundaries to land including land held in common.
- (ii) A claim to occupy and work land.
- (iii) Trespass to land.

The question is whether the dispute giving rise to this appeal fell within that defined under Section 3? I have carefully looked at the dispute and I have come to the conclusion that the dispute is not trespass nor a boundary dispute or any claim to occupy and or work land. The Respondent simply is asking to be given half of the aforesaid parcels of land. The claim was given by the Land Disputes Tribunal. If the decision is executed it will mean that parcel **L.R. No. KIINI/KIBINGOTI/NGUGUINI/102** and **MWEA/MAKIMA** will have to be subdivided and new titles for the subdivisions will be issued. It means issues relating to title to land will have been decided. The Land Disputes Tribunal and the Appeals Committee did not have such jurisdiction. On this ground alone, the appeal is allowed with costs to the Appellant.

*Dated and delivered at Nyeri this 7<sup>th</sup> day of May 2010.*

**J. K. SERGON**

**JUDGE**

In open court in the presence of Kamau holding brief Gathiga Mwangi for the appellant. No appearance for Respondent.