



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 55 of 2009

JAMES NJUGUNA WAWERUAPPELLANT

-versus-

LUCY WAITHIRA KINYENIRESPONDENT

(Arising from the Central Province Land Disputes Appeals Committee Tribunal Claim No. Maragwa 23 of 2005 delivered on 30th April 2009)

JUDGMENT

This judgment is the result of the appeal against the decision of the Central Province Land Disputes Appeals Committee Tribunal Claim No. Maragwa 23 of 2005 delivered on 30th April 2009.

The facts leading to the filing of this appeal are largely undisputed. Lucy Waithera Kinyeni, the Respondent herein, filed a complaint before the Kigumo Land Disputes Tribunal in which she claimed to be entitled to recover the parcel of land known as L.R. No. Kambiti/Block 2/266 from the registered proprietor, James Njuguna Waweru, the appellant herein. The complaint was heard and the tribunal found the case in favour of the Respondent. The appellant was unhappy with the aforesaid decision, hence he preferred an appeal to the Central Province Land Dispute Appeals Committee. The appeals Committee heard, dismissed the appeal and confirmed the judgment of the Land Disputes Tribunal. Being further aggrieved, the appellant preferred this appeal.

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

1. ***The appeals Tribunal erred in law in adjudicating in matters affecting title to land without jurisdiction .***
2. ***The appeals Tribunal erred in law in failing to note that both parties were claiming to be entitled to the land and hence the issue was beyond their jurisdiction. The tribunal had cancelled the appellant's title.***

It is the submission of Mr. Gacheru, learned advocate for the appellant that the Appeals Committee and the Land Disputes Tribunal had no jurisdiction to hear and determine a dispute relating to title to land. In response to this submission, the Respondent in her grounds filed to oppose the appeal conceded that the tribunal and the Appeals Committee had no jurisdiction to hear and determine the dispute relating to title to land. She urged this court to resolve the dispute in view of the fact that it possessed jurisdiction. There is no doubt that the Land Disputes Tribunal's jurisdiction is clearly defined under S. 3(1) of the land Disputes Tribunal Act. The Act did not give the Tribunal and the Appeals Committee to hear and determine a dispute relating to title to land. There is no doubt that the appellant is the registered proprietor of the parcel of land known as L.R. No. Makuyu/Kambiti/Block 2/266. It is also not in dispute that the Land Disputes Tribunal made a decision

which will effectively lead to the cancellation of the name of the appellant from the register as the owner of the aforesaid parcel of land. The tribunal did not have such power to hear and determine such a dispute.

In the end the appeal is allowed. Consequently the decision of the Central Province Land Disputes Appeals Committee is set aside and is substituted with an order dismissing the complaint before the Land Disputes Tribunal. Costs of the appeal and the tribunal is awarded to the appellant.

Dated and delivered this 11th day of June 2010.

J.K. SERGON
JUDGE

In open court in the presence of Mr. Kiminda h/b Gacheru for Appellant and the Respondent in person.

J.K. SERGON
JUDGE