

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
Judicial Review 51 of 2008**

**REPUBLIC.....APPLICANT
VERSUS
THE LAND DISPUTES APPEALS COMMITTEE
(RIFT VALLEY PROVINCE).....RESPONDENT
AND
JOSEPH NGIGE IBARE.....INTERESTED PARTY
FRANCIS MBUGUA IBARE.....SUBJECT**

RULING

The Notice of Motion herein dated 9th December, 2009 prays for orders of certiorari to remove into and quash the proceedings and verdict of the Rift Valley Province Land Disputes Appeals Committee made on 30th September 2008, and submitted to court for adoption as a decree of the court but was apparently not so adopted.

The issue raised is whether a Land Disputes Tribunal and its appellate arm the Provincial Land Disputes Appeals Committee has jurisdiction to determine disputes or questions relating *firstly* to ownership of land and *secondly* to inheritance of land.

In my view the leading authority on this issue is the case of **WAMWEA vs. CATHOLIC DIOCESE OF MURANG'A REGISTERED TRUSTEES [2003] KLR 389**, Hon. Khamoni J held inter alia-

"(1) *Tribunals and Land Disputes Appeals Committees do not have jurisdiction to hear disputes over title to land. Disputes over contracts are also not under their jurisdiction.*"

In this matter, I should also add that Land Disputes Tribunals and Land Disputes Appeals Committees do not have jurisdiction over matters relating to inheritance or succession. This is because the role or jurisdiction of Land Disputes Tribunals is both prescribed and therefore circumscribed by the provisions of **Section 3** of the **Land Disputes Tribunals Act, 1990 (No. 18 of 1990)** to -

- (a) the division of or determination of boundaries to land, including land held in common;
- (b) a claim to occupy land;
- (c) trespass to land.

The disputes which went before the Bahati Land Disputes Tribunal was regarded by that Tribunal and the Appeals Committee as a claim to occupy land, in essence it is a claim to determine who among the disputing brothers should inherit the land in question. When it comes down to determination of a question of inheritance or succession to land, the law applicable is the Law of Succession Act, (Cap. 160, Laws of Kenya) and not the provisions of Section 3 of the Land Disputes Tribunals Act.

In this case the dispute among the ex parte Applicant and Interested Party is who should inherit BAHATI/KABATINI BLOCK 1/1169 which belonged to RUTH WANGUI IBARE (*the deceased*) and whose title on the land documents the deceased is said to have handed over to the Interested Party - Joseph Ngige Ibare in the presence of the ex-parte Applicant Francis Mbugua Ibare, and her daughter Naomi Wambui and her husband (*son-in-law*), and there is a suggestion that the ex-parte Applicant thereafter obtained title "*dubiously before the legal distribution of their late mother's estate was sanctioned.*"

For essentially that reason, both the Tribunal and the Appeals Committee decided that the Interested Party should remain in occupation of the deceased's land (*notwithstanding that the ex-parte Applicant has title thereto*) pending the determination of who among the brother should own the land.

The Appeals Committee in effect reversed the decision of the Bahati Division Land Disputes Tribunal which had purported to order the Registrar of Lands to cancel the title to parcel number Bahati/Kabatini Block 1/1169. The tribunal had of course no such jurisdiction, and the Appeals Committee was quite right in reversing it as it was illegal and void *ab initio*.

In conclusion therefore, as the Appeals Committee in essence reversed the decision of the Bahati Land Disputes Tribunal and decided to maintain the status quo, there is no cause to quash that decision and I so hold.

In the circumstances the proper order to make is to uphold the decision of the Land Disputes Appeals Committee, dismiss the motion herein dated 9th December, 2008 and direct each party to bear its own costs and be at liberty to move the court in its civil jurisdiction on a Succession Cause.

There shall be orders accordingly.

Dated, signed and delivered at Nakuru this 23rd day of July 2010

M. J. ANYARA EMUKULE
JUDGE