

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL APPEAL NO.17 OF 2009

ISAAC MAINA IHOMBA.....APPELLANT

VERSUS

STEPHEN MURATHI MUIRURI.....RESPONDENT

JUDGMENT

The dispute herein revolves around common boundaries of parcels of land known as LR. No.12020/22, 12020/23 and 12020/24. The parties collectively submitted themselves to the District Land Disputes Tribunal at Limuru which gave its verdict in respect of the dispute, but the appellant appealed to the Provincial Land Disputes Appeal Tribunal which gave its verdict on 27th November, 2008. The appellant was aggrieved by the said verdict and lodged this appeal to this court.

Counsel on record agreed that they address the appeal by way of written submissions which they filed.

I have gone through the records and the submissions by both learned counsel for the parties. The Appeals Tribunal decision from which this appeal arises, is very brief and lacking in detail. I have tried to relate the proceedings before the Appeals Tribunal to the main dispute and with respect, see no nexus because the Appeals Tribunal digressed from the original dispute and addressed issues which were not at the centre of the proceedings before the District Land Disputes Tribunal. The Appeals Tribunal also alluded to a request by both parties to set aside the District Land Disputes Tribunal award, which consent has not been produced in these proceedings.

If it is true that the respondent had no case against the appellant as set out in the said proceedings, then this appeal would not have proved necessary. The grounds of appeal presented before the Provincial Appeals Committee were detailed and addressed the questions that were canvassed before the District Land Disputes Tribunal. Regrettably however, none of those grounds appear to have been considered by the Appeals Tribunal. I am not therefore surprised that, that decision has compelled the appellant to move to this court.

My considered view is that, having failed to address the grounds of appeal, the decision cannot stand. Because of the order I am just about to make I elect to say no more. This appeal is hereby allowed and I order that another Appeals Committee shall be reconstituted to hear the appeal afresh within thirty (30) days of today. The appellant is entitled to the costs of this appeal.

Orders accordingly.

Dated, signed and delivered at Nairobi this 8th day of November, 2010.

A. MBOGHOLI MSAGHA

JUDGE