

**GLADYS NYAMBURA GATERE (Suing for and on behalf of the
Estate of GATERE KINYUA(DECEASED) APPELLANT**

VERSUS

MARGARET WAMBUI MUGO RESPONDENT

(Appeal from the Land Disputes Tribunal Central Province award No. 13 of 203 dated 14th June 2007)

J U D G M E N T

The record of appeal herein shows that there was a boundary dispute involving land parcel numbers **Chinga/ Kagongo/256** and **258** owned by the respondent and appellant respectively. That dispute culminated in the respondent instituting a claim against the initial appellant, **Gatere Kinyua**, since then deceased in the Othaya Land Disputes Tribunal. Having listened to the appellant as well as the respondent together with their respective witnesses, the tribunal ruled that “..... **According to the map certified by the Provincial Surveyor – Nyeri letter No. CT/6/D/NYI/XI/76 dated 29th May 2003 confirm that neither of the two parcels Nos. Chinga/Kagongo /256 and 258 crosses the Othaya/Kiriaini road. We therefore award each party to remain in her/his portion according to the official map. The caution (sic) lodged by the objector on the claimant land is not justified.....**”

This was the essence of the award read to the parties on 9th June 2003. An appeal subsequently followed. The Provincial land Disputes appeals committee, Central Province, having considered the appeal rendered apparently two verdicts on two different occasions, 25th June 2007 and 24th August 2007. The one of 14th June 2007 was in these terms “..... **Having perused all the available documents and having listened to both parties we award each party to remain in her or his portion according to official map i.e. Chinga/Kagongo/256 to remain reading (sic) Gatere Kinyua and Chinga/Kagongo/258 to remain reading Margaret Wambui Mugo**” The award read to the parties on 25th June 2007 was however in terms that:- “..... **The parcels to be awarded to remain in her/his portion according to the official map. The caution be (sic) lodged by the objector on the claimant land not justified.....**” In other words, the appeals committee by those two awards merely reaffirmed the decision of Othaya Land Disputes tribunal.

The appellant was not happy with the awards of the appeals committee. On 27th July 2007 he lodged the instant appeal through **Messrs C.M. King’ori** advocates. He put forth seven grounds upon which she sought to impugn both awards. These were:-

- “1. The Appeals tribunal erred in law in proceeding in a matter that was outside its jurisdiction.**
- 2. The Appeals Committee erred in law in making an award that offended the express provisions of the Registered Land Act, Cap 300 Laws of Kenya.**
- 3. The Appeals Committee erred in law in making an award that contravened the mandatory provisions of the Land Control Act.**
- 4. The Appeals Committee erred in law in making an award that affected the title to the subject land whereas it was not vested with jurisdiction thereof.**
- 5. The Appeals Committee erred in not properly addressing itself to the matters before it and in particular the subject parcels of land.**
- 6. The Appeals Committee, erred in seeking to rectify a first registration whereas it is not vested with the corresponding jurisdiction.**

7. **The Appeals Committee erred in law in entertaining a claim that was statute barred.**

On 18th June 2008, **Kasango J** certified that the appeal as filed raised points of law as required. When eventually the appeal came before me for hearing, parties agreed to argue the same by way of written submissions. Those submissions were subsequently filed and exchanged. I have carefully read and considered them.

This appeal is bound to succeed on the ground that by the time the appeals committee made its award, assuming that we are talking of the award delivered on 14th June 2007, the appellant **Gatere Kinyua** was long dead. From the death certificate annexed in the record of appeal, the appellant passed away on 19th April 2004. The resultant award was thus a nullity and invalid as the tribunal proceeded to deal with the property of a deceased person in the absence of a grant of representation. That act flew in the face of Section 45 of the Law of Succession Act. Even if we were to assume that the award complained of was the one read out to the parties on 25th June 2007, the same reasoning still applies. The provincial land disputes appeal committee proceeded to hear a matter when one of the parties had passed on and no letters of administration limited or otherwise had been obtained. It appears that on 30th May 2007 when the appeal was heard the appellant was already deceased and no legal representative had been appointed with regard to his estate. Letters of Administration ad Litem were issued on 6th July 2007 long after the appeals committee had made an order affirming the tribunal's award. To that extent, the resultant awards were a nullity.

Again, it would appear that the appeals committee apparently made two separate awards over the same dispute. The first one was dated on 14th June 2007 and later one dated 25th June 2007. The Land Disputes Tribunals Act envisages only one award and by making two awards as it did, the appeals committee acted unlawfully and in excess of jurisdiction. The resultant awards were thus irregular and illegal again.

From the proceedings at Othaya land Disputes tribunal, it emerged that **Gatere Kinyua**, deceased entered into the portion of land in dispute and planted coffee bushes therein sometimes in 1958. The respondent did not discover that the portion in dispute was hers until she hired a surveyor. By seeking to claim the disputed portion of land through the Othaya Land Disputes tribunal in a claim commenced in the year 2002, the same was clearly statute barred by dint of section 7 of the Limitation of Actions Act. Therefore both the Othaya Land Disputes Tribunal and the appeals committee had no jurisdiction to entertain the claim by virtue again of section 13(3) of the Land Disputes Tribunals Act.

For the foregoing reasons the awards of both Othaya Land Disputes Tribunal and the appeals Committee are held to be null and void. Accordingly they are set aside. The appeal to that extent is allowed. However there still will be no order as to costs.

Dated and delivered at Nyeri this 29th day of October 2009.

M. S. A. MAKHANDIA

JUDGE