



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MERU**

**Civil Appeal 91 of 2007**

**M'MBIJIWE M'MUTUOTA ..... APPELLANT**

**VERSUS**

**JANE KATHANGA M'RUKARIA ..... RESPONDENT**

***(An appeal from the award or decision of the Provincial Appeals Committee read on 16<sup>th</sup> July 2007 in CMCC LDT No. 16 of 2003 before A.K. Mwicigi in Meru)***

**JUDGMENT**

The appellant at all material times was the registered owner of parcel No. Ntima/Igoki/222. A dispute was referred to the Land Dispute Tribunal by the respondent where she claim that she was entitled to the same property. The appellant in his defence informed the tribunal that following the succession cause of his father's estate he had been registered as the owner of the parcel of land. As it is stated here before, the respondent claimed that she is entitled to that land and her entitlement was on the basis that it belong to her deceased father. The appellant in the tribunal denied that assertion and stated that it was previously registered in his father's name. There was some suggestion during the proceedings that the appellant and the respondents are cousins. The tribunal after receiving evidence in its award ordered that the land be divided equally between the appellant and the respondent. The appellant was dissatisfied with that decision and filed an appeal before the Provincial Land Appeals Committee Embu. The appeals committee upheld the tribunal's decision. The appellant has now filed this appeal against that decision of the appeals committee. He has brought before court 5 grounds of appeal which are as follows:-

1. **The honourable tribunal erred in law and fact by upholding the decision of the Meru Central District Land Disputes Tribunal.**
2. **That honourable tribunal misapprehended the facts of the case since the respondent is the cousin to the appellant and has no right to challenge ownership of the appellant's land parcel, which he inherited from his father.**
3. **The honourable tribunal erred in law and facts in failing to consider the evidence of the appellant since the suit land had already been transferred to the appellant from his father and therefore the appellant had no share for his cousin from the estate of his father and the fact that the respondent was and even now married and has now rescinded in the subject land after her marriage.**
4. **The honourable tribunal erred in law and fact by upholding the entire evidence of the respondent which evidence was baseless.**
5. **The honourable tribunal erred in law and facts in making the award to deal with a title, which is registered land Act Cap 300 Laws of Kenya because they lack powers to rectify or cancel a title deed.**

The title of the suit property was exhibited before the Tribunal and it is shows that the property is indeed registered in the name of the appellant under Registered Land Act. The jurisdiction of the Tribunal is set out under Section 3(1) of the Land Dispute Tribunal Act. It is in the following terms:-

***“3. (1) Subject to this Act, all cases of a civil nature involving a dispute as to-***

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

***Shall be heard and determined by a Tribunal established under section 4.”***

As can be seen from that jurisdiction, the tribunal is limited in considering matters relating to trespass, boundary dispute and the use of land. Their jurisdiction under that section does not extend to making orders relating to title. It has been said many times that jurisdiction is everything. Indeed this was the statement in the case of **Owners of the Motor Vessel “Lillian S” Vs. Caltex Oil** (Kenya) Ltd [1989] KRL 1 where it was stated:-

***“Jurisdiction is everything. Without it, a court has no power to make one more step.”***

It is obvious when one considers section 3(1) that the tribunal well exceeded their jurisdiction. In my view, the decision of the Tribunal was *ultra vires* that section. The decision of the Tribunal amounted to ordering the cancellation of the appellant’s title and ordering the same to be sub divided between the appellant and the respondent thereby having two titles issued for that land. There are many cases now that have dealt with the issues of the Land Dispute Tribunals exceeding their power. To name but one is a Court of Appeal Case **Jotham Amunavi Vs. The chairman Sabatia Division Land Disputes Tribunal and Ano.** Civil Appeal No. 256 of 2002:-

***“The implementation of the decision of the tribunal entails the sub-division of the suit land into two parcels and opening a register in respect of each sub-division and thereafter the transfer of the sub-division of half acre to Kenyani (see section 89 of the RLA). It is clear that the proceedings before the tribunal related both to title to land and to beneficial interest in the suit land. Such a dispute is not, in our view, within the provisions of section 3(1) of the Land Disputes Tribunal Act. By section 159 of the RLA such a dispute can only be tried by the High Court or by the Resident Magistrates’ Court in cases where such latter court has jurisdiction.”***

It is obvious now that my view is that this appeal must succeed on all grounds presented by the appellant. I do find therefore that the appeals committee did err in upholding the decision of the Land Dispute Tribunal. The judgment of this court is:-

- 1. That the award of the Land Dispute Tribunal in case No. 76 of 2000 and the decision of the Provincial Land Appeals Committee at Embu in appeal case No. 88 of 2003 are hereby set aside.***
- 2. The appellant is hereby granted the costs of this appeal.***

Dated and delivered at Meru this 26<sup>th</sup> November 2009.

**MARY KASANGO**

**JUDGE**