



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU**

Civil Case 59 of 2006

MUGO NYAGA.....APPELLANT

VERSUS

NJERU MURUAKEA.....RESPONDENT

JUDGMENT

This appeal is against the decision against the award of Eastern Provincial Lands Dispute in the Appeal Committee appeal Case No. 45 of 2005 and Award read in Embu Senior Principal Magistrate Award No. 16/2006 read on 27/7/2006. The grounds of Appeal are set out as follows:-

1. The Appeals Committee failed to specify the documents used to arrive at its decision
2. The Appeals Committee failed to consider that the evidence on record points to the existence of customary trust.
3. That the Appeals Committee erred when it considered extraneous matters that were not part of evidence adduced in court by the parties.

On the first ground the Appeals Committee mentioned verifying documents that could only have been the green card which is a record of the history of the registration of the relevant parcel of land. Regarding the ground numbered 2. The Appeals Committee found that the land was registered as Gaturi/Nembure/1831 and the Green Card did not indicate that the title was held in trust for anyone. And therefore the Respondent held the land absolutely in terms of Registered Land Act Cap.300. The Land Disputes Act 18/1990 does not empower the Tribunals to decide on the issue of ownership of registered land or issues of claims of trust.

Regarding ground numbered 3 it is clear that the Appellant has taken no steps to claim the land since he left in 1965.

It is my view that the Appeals Committee applied correct principles of law within their powers and I do not see any use of extraneous matters or evidence in their decision. For above reason this appeal is dismissed with no order as to costs.

Dated this 12th February, 2008.

J. N. KHAMINWA

JUDGE

12/2/2008

Khaminwa – Judge

Njue – Clerk

Appellant present

Respondent present

Read in open court.

J. N. KHAMINWA

JUDGE