



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**  
**H.C.C.A. 407 OF 2000**

**KIBANYU KIMANI. ....APPELLANT/APPLICANT**

**VERSUS**

**TABITHA NJAMBI KANGETHE & ANOTHER. .... RESPONDENTS**

*(From the Ruling and Orders of the Provincial Land Disputes Appeals Committee, Central Province sitting at Nyeri in Appeal Case No. Kiambu/39/1999)*

**J U D G E M E N T**

The appellant Kibanyu Kimani appealed to this court against the decision of the Central Provincial Land Disputes Appeals Committee in Appeal Case Number Kiambu/39/99. He raised the following Grounds of Appeal: -

1. That the appeals Committee erred in law by denying and refusing the appellant herein an opportunity to present his case or to be heard in support of his case before arriving at its judgment.
2. That the Appeals Committee had no grounds for varying the Githunguri Land Disputes Tribunals Decision as no evidence was presented before it by either party.
3. That the Appeals Committee's finding that the suit before the Githunguri Land Disputes Tribunal was Res Judicata the Succession Cause No. 2 of 1997 was bad in law as it did not satisfy the principles of the Res Judicata.
4. That the Appeals Committee acted ultra vires their jurisdiction in making the finding that the sale of the estate land by the deceased was null and void.
5. That Appeals Committee erred in failing to recognize and uphold the appellant's adverse possession for 37 years.
6. That the Appeals Committee erred in law in proceeding to hear the appeal and determine the same

finally when the appellants (respondent herein) were not parties before the Githunguri Land Dispute No. 16/20/87/98 from which the appeal before tribunal arose.

The brief facts of this appeal as the court understands it is as follows: -

Sometimes in 1963 the appellant herein bought a small piece of land from the deceased Kangethe Gachuchu at price of 10 goats or 200/- and a written agreement was made and was produced as evidence before Githunguri Land Disputes Tribunal. The land measured 0.28 acres. By 1973, the appellant had paid the whole purchase price. In 1974 Kangethe Gachuchu died through a road accident. He had not transferred the land to the appellant.

When the appellant tried to pursue the matter, the deceased's son, Mburu denied the agreement of sale earlier entered with his father. He however later agreed to resell the piece of land to the appellant at the price of Ksh.45000/- on 2.10.1976. The appellant paid Ksh.1000/- immediately and a fresh sale agreement was signed between the appellant and the said Mburu on behalf of the deceased's family. This new agreement was also produced in evidence before the Githunguri Land Disputes Tribunal earlier mentioned.

In the mean time Mburu and the family petitioned for a Grant of Letters of Administration to Kangethe Gachuchu's deceased's estate in Kiambu Succession Cause Number 2 of 1997. For reasons which are not clear and which could be clearly intended to deprive the appellant his rights on the land, the family did not include the appellant as one of the beneficiaries in respect of the 0.28 acres of the deceased's land. During the hearing of the Githunguri Land Disputes Tribunal Proceedings, the appellant brought that fact to the attention of the Tribunal beside the other pieces of evidence to prove his rights.

The said Lands Disputes Tribunal considered all the evidence before it. It decided that the appellant was entitled to the 0.28 of an acre of the deceased's estate and that he should immediately be included as a beneficiary. That decision aggrieved the respondents who appealed to the Central provincial Land Disputes Committee in Appeal Number Kiambu Appeal Number 39 of 1999.

Unfortunately, the records of the above committee are contained only in a single page. It shows the names of the appellants as Tabitha Njambi Kangethe and Beatrice Njahira Kangethe and the respondent as Kibanyu Kimani. The proceedings of the Committee are contained in two numbered paragraphs against which are signatures of the members. It is not clear to this court whether the contents of the said two paragraphs are proceedings or the findings of the Committee.

Having carefully studied the same however, it is the finding of this court the two paragraphs contents are the findings of the Committee. The interpretation this court makes of the findings is that the Committee having studied the proceedings of the Githunguri Land Disputes Tribunal found that the case before that lower tribunal should not have been filed there. The reason as explained in the Committee's decision, was that the tribunal had no jurisdiction to open and hear a matter that had been properly heard by Kiambu Magistrate's Court and finally decided in Succession Cause Number 2 of 1997. That the court of law issued a Grant of letters of Administration and later confirmed it, thereby determining who was entitled as a beneficiary.

This court therefore understands the Appeal Committee to have allowed the two appellants appeal before it and effectively nullified all the proceedings and thus the suit before Githunguri Land Disputes Tribunal by declaring the same null and void. This, in this court's understanding, gave to or left the land in dispute in the hands of the two appellants herein who probably were the administratrixes of the deceased's estate.

That conclusion in my view is what aggrieved the appellant who then raised the grounds of appeal at the beginning of this judgment to which I now turn.

Did the Appeal Committee, then, deny the appellant a right of being heard?

I have carefully considered the question posed above. The conclusion I reach is that neither the appellant nor the respondents got opportunity to address the Committee. It seems to me that the Committee having examined the lower tribunal proceedings and noticed that the tribunal had no jurisdiction to revisit the matter which had already been properly and finally determined by the magistrates Court in Succession Cause Number 2 of 1997, decided not to hear any of the parties. It simply took up the issue of law before it and found it adequate to use to allow the appeal before it.

I have considered the matter carefully and I have come to the conclusion that the Committee acted properly and was right. The only place where the appellant should have pressed for its right to own and be registered as owner of the 0.28 acres of the deceased's estate, was in Succession Cause Number 2 of 1997. It is not explained anywhere why he did not do so when apparently he was aware when the Grant of Letters of Administration was petitioned for. Even if he might have come to know about the issue after the Grant has been issued or confirmed, he still had only to file a summons for Revocation or annulment of a Grant. In my view and finding he did not have the option to file a Land Disputes Tribunal case as he finally did.

This court accordingly finds that it is not necessary to go into the other grounds of appeal recorded above. For example the appellant thought that he was entitled to his piece of land through adverse possession. Since this issue was not raised in the proceedings before any of the tribunals that handled the matter, it may not be properly before this court to consider and determine on. And yet it is clear to this court, without deciding on it, that it is a matter that the applicant may be interested to pursue to protect his possible rights.

Furthermore and as already mentioned earlier, the appellant's rights as a beneficiary under the Grant of Letters of Administration issued under Succession Cause number 2 of 1997, subject to the provisions of the Law of Succession Act, Cap 160, may as have not been closed.

However, for the purpose of this appeal, the appeal has no merit. It is hereby dismissed without an order as to costs since it would appear that the whole conflict originated from the respondent's failure to include the appellant as a beneficiary after he bought the same land from them two times. Orders accordingly.

Dated and delivered at Nairobi this 3<sup>rd</sup> day of March 2008.

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**D A ONYANCHA**

**JUDGE**