



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

**Civil Appeal 52 of 2003**

**SOLOMON M'IRURA MATHIU ..... APPELLANT**

**VERSUS**

**STANLEY M'IKINGU M'IKIARA .....RESPONDENT**

***(An appeal from a judgment of A.O. Muchelule C. M, Meru dated on 9<sup>th</sup> November 2000***

**JUDGMENT**

This is an appeal from the decision of the Land Disputes Appeal Committee sitting at Embu dated 24<sup>th</sup> February 2003. From what can be gleaned from the record the appellant filed a reference to the District Land Disputes Tribunal being LDT No. 56 of 2000. The reference was dismissed prompting an appeal to the Land Disputes Appeal Committee.

The appeal was adjourned twice on 18<sup>th</sup> June 2002 and 24<sup>th</sup> January 2003. It came up again on 24<sup>th</sup> February 2003, when the appellant failed to attend. The Committee noted as follows:-

***“It was noted that the appellant has failed to appear in this committee thrice and having interviewed the respondent, this court was satisfied of the above facts. It was also noted that the transfer of land Abothuguchi/Githongo/815 consisting about 4.25 acres was very procedural because of the following forms:-***

- (i) Application of consent of Land Control Board**
- (ii) Letter of consent Form 2A (3)**
- (iii) Transfer of land form and all other documents pertaining to the transfer of the said land was done according to the laid down procedures.**

**AWARD**

***Appeal is dismissed on account of lack of merit. R/A 60 days. (Signed). 24/2/2003.”***

The appellant has now brought this appeal challenging that decision on seven (7) grounds.

First, it is noted that the appeal proceeded before a certificate under the proviso to section 8(9) of the Land Disputes Tribunals Act (the Act) was issued, to the effect that the appeal involves a point of law. That omission is not, in my view, fatal, as indeed the seven (7) grounds raised in this appeal deal mainly

with the issue of jurisdiction. Learned counsel for the appellant has submitted that both the Tribunal and the Appeal Committee lacked jurisdiction to entertain the dispute. He relied on section 3 of the Act and the Registered Land Act. He also relied on three decisions of the High Court.

Learned counsel for the respondent opposed the appeal arguing that there was no decision or proceedings of the Appeal Committee. That the appeal was dismissed for non-attendance of the appellant.

On jurisdiction, he argued that the Tribunal and the Appeal Committee had jurisdiction as the dispute related to a claim to occupy land. Again, from what I am able to glean from the record it would appear that the claim was based on an agreement dated 27<sup>th</sup> January 1997 in which the appellant had agreed to sell to the respondent the suit land at a consideration of Kshs. 20,000/=. That claim clearly was in excess of the Tribunal's jurisdiction under section 3 of the Act.

The Appeal Committee, on the other hand, did not only dismiss the appeal but made a substantive order concurring with the Tribunal as set out in the preceding paragraph.

It relied on the fact that all the necessary procedures for a transfer were complied with and proceeded to uphold the Tribunal's decision. The Appeal Committee too, exceeded its jurisdiction. I so find.

For these reasons, this appeal succeeds. The decision of both the Tribunal and the Appeal Committee are set aside and the appeal allowed with costs to the appellant.

Dated and delivered at Meru this 5th day of April, 2008.

**W. OUKO**

**JUDGE**