



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Appeal 6 of 2000

COSMAS KANJA MBUTETI.....APPELLANT

VERSUS

JACKSON MURAGE.....1ST RESPONDENT

NAHASHON KIMOTHO.....2ND RESPONDENT

PAUL KABINGO.....3RD RESPONDENT

DANIEL GACHOKI.....4TH RESPONDENT

JUDGMENT ON APPEAL

This appeal arises out of proceedings before **Provincial Land Disputes Appeals Committee in Appeal No. 101/1999.**

The grounds are that the Committee misunderstood the doctrine of Res Judicata that the Tribunal misdirected itself on the legal implication of ruling in Succ.No.5/86. That the Tribunal failed to appreciate that the Senior Resident Magistrate was aware of Succession No. 5/86 when referring the dispute to the Tribunal on 17/3/1998. That the Tribunal exceeded its jurisdiction on terminating the appeal to uphold the decision of the lower court. The decision of the Provincial Land Disputes Appeals Committee in its decision given on 28/2/2000 found that the dispute before it was Res judicata the Resident Magistrate's court at Kerugoya having confirmed the decree in succession case.

The records shows that in the **Central Divisional Land Disputes Tribunal Case No. 9 of 1997** in respect of Inoi/Ndimi/86 the claimant was Cosmas Kanja Mbuteti and Objector was Jackson Murage, Paul Kabingo, Nahashon Kimotho, Daniel Gachoki Muchiri. That Tribunal awarded Cosmas Kanja Mbuteti ¼ acre which was to be apportioned from the whole parcel Inoi/Ndimi/86.

In the Central Provincial Appeals Committee it was alleged that the issue of ownership of plot No. Inoi/Ndimi/86 had been decided in **Senior Resident Magistrate Succ.No. 5 of 1986** when the land was distributed among the persons named in Certificate of confirmation of grant and therefore the decision of Central Land Disputes Tribunal was wrong and contrary to Section 13 of Land Disputes Act. (Act 18 of 1990.) The certificate of confirmation issued on 14/12/1993. This was already before the

decision of the Land Disputes Tribunal.

I have perused the record of all the 2 decisions of the tribunals and it is quite clear that the Tribunal have no power to entertain dispute in matters already decided by a court of competent jurisdiction. What the parties intended to do is to undo the distribution of the land in question which was distributed in a Succession case.

I find no merit in this appeal and the same is hereby dismissed.

Dated this 21st May, 2008.

J. N. KHAMINWA

JUDGE

21/5/2008

Khaminwa – Judge

Mr. Njagi

Mr. Paul present in person

Read in open court.

J. N. KHAMINWA

JUDGE