



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 224 of 2005**

**NJUGUNA KANOGA.....APPELLANT**

**VERSUS**

**KIMANI KANOGA.....RESPONDENT**

**JUDGMENT**

The facts which gave rise to this appeal briefly may be stated. The appellant and the respondent are brothers. There arose a dispute over the suit land being LR LOC. 61 GIKARANGU/1556 which is registered in the name of the appellant but which the respondent claims was a family land.

The dispute was referred to Arbitration under the provisions of the Land Disputes Tribunals Act No 18 of 1990. The elders awarded the respondent the suit land.

The award read as follows:

- (1) Mr. Njuguna the Defendant do transfer the suit land LR NO. LOC. 6/gikarangu/1556 to the claimant his brother Kimani Kanoga.
- (2) The Court Executive Officer to sign the transfer forms on behalf of the defendant Njuguna Kimani.
- (3) Kimani Kanoga to meet the cost of the transaction and the suit.

After the award of the Tribunal, the Plaintiff/Respondent filed an application by way of Notice of Motion at the principal Magistrate's Court Muranga seeking orders that the Elders' award be entered as judgment of the court in terms of the Land Disputes Tribunal award which was done on the 11<sup>th</sup> March 2005. Njuguna Karoga the defendant in the Tribunal being dissatisfied with the award appealed to this court seeking orders to set aside the judgment.

The Memorandum of Appeal contains 5 grounds which counsel for the appellant argued together. The main ground of appeal was that the suit land being registered under the provisions of the Registered Land Act Cap 300, the Tribunal had no jurisdiction to entertain the suit.

The jurisdiction to handle land disputes by the Tribunal is donated by Section 3 of the Land Disputes Tribunals Act No 18 of 1990 which provides:

3 (1) Subject to this Act, all cases of a civil nature involving a dispute as to –

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

shall be heard and determined by a Tribunal established under Section 4.

The Act also lays down the procedure to be followed by the elders in the exercise of that jurisdiction.

Section 7 (1) The chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the magistrate's court together with any depositions or documents which have been taken or proved before the Tribunal

(2) The court shall enter judgment in accordance with the decision of the Tribunal and upon judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.

Section 8 of the Act gives the aggrieved party a right to appeal to the Appeals Committee and to the High Court only a point of law.

The proviso to Section 8 of the Act provides that no appeal shall be admitted to hearing by the High Court unless the Judge of that court has certified that an issue of law (other than customary law) is involved.

The point of law involved in this appeal is lack of jurisdiction. Mr Mubea Counsel appearing for the appellant submitted that the proceedings before the Tribunal were a nullity for lack of jurisdiction.

Mr. Kangathi Counsel appearing for the respondent while opposing the appeal submitted that the procedure used to bring the award of the Tribunal to court was fatally defective in that by virtue of Section 7 (2) of the Land Disputes Tribunals the magistrate has no jurisdiction to question the award of the Tribunal. That is correct. That court shall enter judgment in accordance to the decision of the Tribunal. Counsel further submitted that the appellant ought to have come to court by way of judicial review. To this I would say with due respect to counsel, the right of appeal to the High Court is provided for by the Act.

There is no dispute that the appellant is the registered proprietor of the suit land under the provisions of the Registered Land Act Cap 300. The law is clear that the land so registered is dealt with under the provisions of that Act (Cap. 300) Therefore the Tribunal had no jurisdiction to arbitrate over the parcel of land as per Section 143 (1) of the Act (Cap 300) and whatever proceedings was taken by the Tribunal is a nullity. Accordingly the appeal is allowed and the award of the Tribunal dated and the ruling of the 10<sup>th</sup> November 2004 the ruling of the Resident Magistrate dated 11<sup>th</sup> March 2005 are both set aside with no order as to costs.

Delivered and dated at Nairobi this 19<sup>th</sup> day of June 2008.

**J. L. A. OSIEMO**

**JUDGE**