



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**  
**Civil Appeal 287 of 2008**

**MARY WANGARI GAKUU.....APPELLANT**

**VERSUS**

**JANE NYAMBURA WAINAINA.....1<sup>ST</sup> RESPONDENT**

**THIKA CHIEF MAGISTRATE.....2<sup>ND</sup> RESPONDENT**

**THIKA DISTRICT LAND REGISTRAR.....3<sup>RD</sup> RESPONDENT**

**THIKA DISTRICT LAND SURBEYOR.....4<sup>TH</sup> RESPONDENT**

**RULING**

The appellant and the respondent had a dispute over Land being Parcel No. LOC. 16/MWAGU/625. The same was referred to Thika Land Disputes Tribunal being claim No. 32 of 2007. The Tribunal after hearing the evidence of both parcels awarded the respondent 0.25 of an acre in addition to 0.75 of an acre making it 1 acre in total out of the suit land. The Tribunal further ordered that the suit land be surveyed and boundaries put in order to clearly give the Claimant/Respondent 0.25 of an acre corresponding with the title deed already held. The decision of the Tribunal was filed in Chief Magistrate's Court Thika on 31<sup>st</sup> March 2008 and was entered as judgment of the court on 28<sup>th</sup> April 2008. The appellant being aggrieved by that decision of the Tribunal appealed to this court. The appeal was filed on 28<sup>th</sup> May 2008.

On 24<sup>th</sup> June 2008 the appellant filed an application by way of Notice of Motion seeking an order that appeal be set down for hearing at the earliest convenience. The application is based on the ground that the intended appeal was certified urgent by the court on 3<sup>rd</sup> June 2008 and was fixed for hearing interpartes on 17<sup>th</sup> June 2008 with due respect to counsel, this is incorrect. What was certified urgent on 3<sup>rd</sup> June 2008 is an application by way of notice of motion dated 28<sup>th</sup> May 2008 which sought injunctive orders to restrain the respondent from effecting the decision of the Tribunal.

When the Notice of Motion dated 24<sup>th</sup> June 2009 was served upon the respondent, he raised a preliminary objection on the ground that the same was unprocedural, defective and bad in law.

Mr. Muturi for the respondent submitted that in view of Section 7 (1) and (2) and Section 8 (1) of the Land Disputes Tribunal Act No 18 of 1990 both the Appeal and the Notice of Motion are incompetent and improperly before this court as the same were filed after the Award of the Tribunal had been entered

as judgment of the court culminating the same becoming a decree of the court. Counsel urged the court to strike out both the application and the appeal.

Mr. Meso for the 2nd, 3rd and 4th Respondents associated himself with the submissions by Counsel for the 1st Respondent and added that this court lacks jurisdiction to entertain the appeal. He submitted that the right of appeal to the High Court is only available after the aggrieved party has lost in the Provincial Appeals Committee. While Mr. Onyango for the appellant submitted that the appeal is competent and properly before this court.

The right of appeal from the decision of the Tribunal is donated by Section 8 (1) and (9) of the Land Disputes Tribunals Act No 18 of 1990 which provides as follows:

**“8(1) Any party to a dispute under Section 3 who is aggrieved by the decision of the Tribunal may within 30 days of the decision, appeal to the Appeals Committee Constituted for the province in which the land which is the subject matter of the dispute is situated.”**

**“8 (9) Either party to the appeal may appeal from the decision of the Appeals Committee to the High Court on a point of law within 60 days from the date of the decision complained of.”**

It is clear from the above Statutory Provisions that the appellant would only come to the High Court as a second appeal after the appeal against the decision of the Provincial Appeals Committee.

Further I would like to comment on the Appellant’s appeal. The Appellant’s notice of motion of 24<sup>th</sup> June 2008 seeking order that the intended appeal filed on 28<sup>th</sup> August 2008 be set down for hearing is premature as the same has not been admitted. See the proviso to Section 8 (9) of the Land Disputes Tribunal Act No. 18 of 1999 which provides that:-

**“No appeal shall be admitted to hearing by the court unless a Judge of that court has certified that an issue of law (other than customary law) is involved.”**

Even if the appeal was competent, the same could not be set down for hearing as the same had not been admitted as provided for in the Act.

Accordingly for the reasons stated above the appellants appeal and the notice of motion are struck out for being incompetent. The respondents are awarded costs of the application.

Dated and delivered at Nairobi this 17<sup>th</sup> day of October 2008.

**J. L. A. OSIEMO**

**JUDGE**