



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Civil Appeal Case 37 of 2003

MARY WANGUI GICHOGO.....APPELLANT

Versus

CHARLES MUCHEMI MUTUGI.....1ST RESPONDENT

MONICAH WANGUI GICHOGO.....2ND RESPONDENT

SAMUEL MUTUGI GICHOGO.....3RD RESPONDENT

PETER NDUNGU GICHOGO.....4TH RESPONDENT

JAMES NGARARU MUTUGI.....5TH RESPONDENT

MAINA MUTUGI NDUNGU.....6TH RESPONDENT

*(Being appeal from the order/judgment of the Provincial Land Disputes of Appeals
Committee Central Province made on 23rd January 2003)*

JUDGMENT

This appeal is from the decision of the Provincial Land Dispute Committee Central Province. This being the second appeal the Appellant is only entitled to raise grounds on points of law. The grounds raised by the Appellant can be condensed to that the Appeals Committee did not have jurisdiction to deal with ownership of land. The matter was referred to the Land Dispute Tribunal Tetu. The claim was filed by brothers of Joseph Mutugi, also by his children and by the first wife. Joseph Mutugi now deceased had transferred property **TETU/ICHAGACHIRU/509** into the name of his second wife the Appellant herein. The Appeals Committee upheld the decision of the District Land Disputes Tribunal that is:

(i) Joseph Mutugi, deceased, to have 5.2 acres and to share the same between the two wives each getting 2.6 acres.

(ii) the three brothers were to get two acres each.

As stated before, the Appellant brings this appeal on the ground that the Appeals Committee did not have jurisdiction to give those orders. The tribunal derives its jurisdiction from *Section 3(1)* of the Land Dispute Tribunal Act. That section provides as follows:

“Subject to this Act, all cases of a civil nature involving a dispute as to

(a) the division of, or the determination of boundaries to, land, including land held in common;

(b) a claim to occupy or work land; or

(c) trespass to land,

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

As can be seen the jurisdiction under this section does not allow the tribunal to deal with rectification or redistribution of registered land. Indeed the jurisdiction does not allow the tribunal to deal with issues relating to declaration of trusts, which is what they did here. The end result of their decision was to deprive the Appellant her rights of ownership to title. Hon. Justice Visram in the case of **DAVID KARIUKI MATHENGE -V- JOSEPH GATHUO GITHOGORI NAKURU CIVIL APPEAL NO. 47 OF 2000** held that the tribunal established under the Act had no jurisdiction over land registered under the Registered Land Act. My take of this is that the tribunal's jurisdiction is restricted to instances provided under *Section 3 (1)* of the Act. That jurisdiction does not extend to decisions which would amount to rectification of the register. In the case of **REPUBLIC -V- OLOLOLUNGA LAND DISPUTE TRIBUNAL exparte ISIAAH KIPLAGAT CHELUGET NRB HIGH COURT MISC. 926 OF 1999** Hon. Justice Aganyanya stated:

“.....when the land dispute act gives members of the tribunal power to decide on the division or occupation of land it is not saying that the tribunal should encroach on land registered in individuals name and begin dividing it for the benefit and occupation of third parties.....The Tribunal has no jurisdiction to change the position of a registered land.”

Hon Justice Ibrahim in the case of **GIBSON SENGETE MATOTO -V-EASTERN PROVINCE LAND DISPUTE COMMITTEE & OTHERS HC MISC. C.APP.331 OF 2003**, held that Makueni District Land Tribunal Appeals Committee had no jurisdiction to hear and determine questions of ownership and title to land registered under Registered Land Act and that the Committee in so doing had acted *ultra vires* of the statute. The Central Province Land Dispute Appeals Committee by their decision hereof sought to curve off the Appellant's registered land. They had no jurisdiction and did indeed act *ultra vires* to the statute that gives them jurisdiction. Accordingly the Appellant's appeal on that ground does succeed and the judgment of this court is that the orders of Central Province Land Disputes Appeals Committee in Nyeri No. 18 of 2002 made on 23rd January 2003 is hereby vacated. The costs of the appeal are awarded to the Appellant.

Dated and delivered at Nyeri this 2nd day of October 2007.

MARY KASANGO

JUDGE