



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 102 of 2002

EVANS MATINDI MUURU.....APPELLANT

*Versus*

MARGARET GACHIKU & 15 OTHERS.....RESPONDENTS

*(Being appeal from the award of the Provincial Land Disputes Appeals Committee Central*

*Province in Appeal No. Kaimbu 111 of 1999)*

JUDGMENT

This dispute relates to allocation of immovable property to the three wives of the Appellant. The dispute occurred during the lifetime of the Appellant. The first and second wives of the Appellant referred this matter to the District Land Disputes Tribunal at Kiambaa. The main dispute of those two wives was that the third wife was not a legal wife to the Appellant and was therefore not entitled to be allocated the Appellant's land. By their decision of 3<sup>rd</sup> December 1999 the tribunal ordered the Appellant to share his property amongst the three wives. In so doing they indicated the acreage each was to get.

The first and second wives appealed against that finding to the Provincial Land Disputes Appeals Committee Central Province. That appeals committee set aside the tribunals decision by finding that the third wife was not entitled to be allocated land. The Appellant being aggrieved has now filed in this court the present appeal. This appeal is based on the following grounds:

1. *The Provincial Lands Disputes Appeals Committee lacks jurisdiction to hear the matter touching on the title to the land and its entire proceedings contravened the provisions of section 3 of the Lands Disputes Tribunal Act 1990 Section 159 of the Registered land Act Cap 300.*
2. *the Provincial Lands Disputes Appeals Committee erred and exceeded its powers in making orders for cancellation or rectification of titles relating to land registered under Registered Land Act.*
3. *The decision of the Provincial lands Disputes Appeals Committee is tantamount to depriving the appellant of his land against his will and without the due process of the law.*
4. *The decision of the committee is against the law and public policy in that it exceeded its jurisdiction in determining the disposition of Appellant's land contrary to his desires and legal rights as the owner of the land.*
5. *The Appeals Committee erred in law and in fact by following an alleged clan decision.*
6. *The entire proceedings were a nullity and the composition of the committee members was not in accordance with the Land Disputes Tribunal Act.*

As can be seen from those grounds, the Appellant is questioning the jurisdiction of the tribunal. The tribunal derives its jurisdiction from *Section 3* of the Land Disputes 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.*

That section clearly does not give the tribunal jurisdiction to deal with rectification of title which is essentially what the tribunal did in respect of the Appellants properties. The court accepts the argument of the appellant that the decision of the tribunal and the appeals committee were *ultra vires* to the Act. Accordingly the appellant does hereby succeed on all grounds of appeal. The judgment of this court is that the award of the Appeals Committee is hereby quashed. There shall be no costs of this appeal due to the fact that the matter involves family members.

**MARY KASANGO**

JUDGE

*Dated and delivered at Nyeri this 15<sup>th</sup> day of November 2007.*

**By: M. S. A. MAKHANDIA**

JUDGE