



**REPUBLIC OF KENYA**  
**AT THE HIGH COURT IN NYERI**  
**CIVIL APPEAL CASE 103 OF 2003**

**JOSEPH NDERITU WAMATHAI.....APPELLANT**

*Versus*

**JOSEPH NDUNGU NJOROGE.....1<sup>ST</sup> RESPONDENT**

**NJUGUNA GATHIGANI.....2<sup>ND</sup> RESPONDENT**

**NGATIA GICHUHI.....3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the judgment/order of Kathoka Ngomo, Principal Magistrate, Nyahururu in Misc. Land Case Number 31 of 2001 read on 14<sup>th</sup> August 2003)*

**JUDGMENT**

The Respondent in this appeal referred the dispute over parcel No. **NYANDARUA/ABERDARE FOREST NORTH BLOCK 1/722** to Nyandarua District Land Disputes Tribunal. The award of that tribunal was read on 18<sup>th</sup> June 2001. It was to the effect that the 1<sup>st</sup> Respondent was awarded 4 acres of that property. The 2<sup>nd</sup> Respondent was awarded 5½ acres. The 3<sup>rd</sup> Respondent was awarded 2 ½ acres. The Appellant applied in the lower Court for that award to be made a judgment of the Court. A decree in terms of that award was issued by the Principal Magistrate's Court, Nyahururu in Misc. Land Case No. 31 of 2001. The date of that decree is 20<sup>th</sup> September 2001. To date that decree has not been set aside. Thereafter the Appellant filed an appeal against that award to the Provincial Land Dispute Appeals Committee Central Province. The Appeals Committee after hearing the appeal gave the award on 24<sup>th</sup> April 2002. In part that award was as follows:

***“The Appeals Committee has proved beyond reasonable doubt that the following buyers were given land by the appellant – JOSEPH NDIRITU WAMATHAI – who admits that he collected their money and has catered for them(sic):***

- 1. Joseph Ndungu Njoro**
- 2. Njuguna Gathigani**
- 3. Ngatia Gichuhi**

***They have no claim to make as they are satisfied with their land allocation by JOSEPH NDERITU WAMATHAI and they have no complaints against him(sic)."***

The Appellant once again applied for the entry of judgment in terms of that award in the same file at Nyahururu Magistrate's Court. That application according to the proceedings does not seem to have been entertained.

The Respondents on their part made an application in the same file seeking that the Court would authorize the Executive Officer to sign the necessary documents in order to effect sub-division in their favour. The sub divisions that they prayed for was in respect of the 1<sup>st</sup> Respondent 4 acres, the 2<sup>nd</sup> Respondent 5 ½ acres and the 4<sup>th</sup> Respondent 2 ½ acres. The lower court by its ruling of 14<sup>th</sup> August 2003 was in the following terms:

*"I have gone through the proceedings of the Provincial Land Disputes Tribunal and I find that the Applicant's application is meritorious. The Respondent has no basis for his objection because the award is very specific. The court does hereby adopt the award of the Provincial Land Disputes Tribunal as its judgment. I further grant the prayer that the Executive Officer of this court do sign the relevant documents since the respondent has refused so to do. I award to the Applicants the cost of the Application."*

That ruling aggrieved the Appellant and as a consequence he filed the present appeal. The Appellant filed the following grounds:

- 1. That the Principal Magistrate erred in law in adopting the Provincial Appeals Tribunal award which was not specific and therefore an award that could not be implemented.***
- 2. That the magistrate further erred in law in holding that Joseph Ndungu Njoroje do get 4 acres; Njuguna Gathigani 5 ½ acres and Ngatia Gichuhi 2 ½ acres the same being in far excess of the award of the Provincial Appeals Tribunal.***

As can be seen from the above summary the Appellant, on his own application, made the Land Disputes Tribunal's award the judgment of the lower court. That award clearly indicated the acreage each respondent was to get. The decree has never been set aside. The Appellant's appeal at the Land Disputes Appeals Committee did not upset that award. Accordingly the lower Court by its ruling of 14<sup>th</sup> August 2003 simply re-adopted the award of the Land Disputes Tribunal. It is important to note that the lower Court did not adopt the award of the Appeals Committee. To that extent and because the lower Court's decree has never been set aside I find that the appeal must fail. The appeal on the ground that the lower Court erred in adopting the award which did not specify the amount of acreage each Respondent was to get is misconceived. The lower Court adopted the award of the Land Disputes Tribunal which specifically identified the acreage each Respondent was to get and which is the subject of the lower court's decree. Accordingly the Appellant's appeal is found to be misconceived and is dismissed with costs to the Respondents.

MARY KASANGO

JUDGE

***Dated and delivered at Nyeri this 14<sup>th</sup> day of November 2007.***

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By: M. S. A. MAKHANDIA

**JUDGE**