



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

Civil Appeal 62 of 1999

JEKILIA WANJIRA MURIITHI

NELSON DOUGLAS KABUI

FRANCIS KANGANGAI

JOHN MURAGE

GERALD KINYUA

JAMES KARANI

STEPHEN MWANGI.....
.....APPELLANTS

Versus

DANIEL NGIRI KIBUCHI

JAMES KARIUKI KIBUCHI FRANCIS KARANI
KIBUCHI.....RESPONDENTS

(Being appeal from the decision of the Provincial Tribunal Case KIE 81 of 1998 delivered on 28th April 1999 at Nyeri)

JUDGMENT

This appeal is against the decision of the Provincial Appeals Committee Central Province. It should be noted that that decision was undated. The grounds of appeal are as follows:

1. ***That the Provincial Appeals Tribunal did not adjudicate upon the Appeal by the Appellants from the Baricho lands Disputes Tribunal Number 38 of 1996.***
2. ***That the earlier decision of the Land Disputes Tribunal was also a nullity which was the main ground of Appeal before the Provincial Appeals Tribunal.***

The Appellant in his argument stated that the failure to hear evidence from the Appellant and the

Respondent amounted to the breach of rules of natural justice and also amounted to misconduct by the Appeals Committee. When directions were being given in this court for the hearing of this appeal on 12th November 2002, the court certified that the appeal raised an issue of law relating to *res judicata*. It would seem that that was the only issue the court was to deal with in this appeal. The Appellant in his argument did not deny that there was a suit before the High Court previous to the hearing before the tribunal namely HCC NO. 308 of 1983 Nyeri. That suit was heard and determined. The tribunal in their detailed judgment found that a decree had been passed in that case which was the subject matter before them for determination. That being the case the appeals committee was quite right to deal with the preliminary issue of jurisdiction. Jurisdiction is everything and the court or a tribunal cannot move forward if it does not have jurisdiction. Jurisdiction is defined in Mozley & Whiteley's Law Dictionary 12th Edition as follows:

“the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.”

The Appeals Committee was right in their decision and in their refusal to entertain the matter on finding it to be *res judicata*. Indeed they are prevented by statute from hearing a matter that has already been determined by any court. This is to be found in *Section 13 (3)* of the Land Disputes Tribunal Act which provides as follows:

“For avoidance of doubt it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court.”

The Appellant if indeed he wished to argue that the matter before the tribunal was not *res judicata* ought to have sought to be allowed to adduce additional evidence at the hearing of this appeal. They did not make such an application and therefore it can only mean that the matter before the tribunal was the subject of a previous suit before court which had been determined. For that reason the Appellant's appeal does fail. The Respondent's argument that the appeal was filed out of time is rejected because the decision of the Appeals Committee was undated. In the end the Appellants' appeal is hereby dismissed and the costs are awarded to the Respondents.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 7th day of November 2007.

By: M. S. A. MAKHANDIA

JUDGE