



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

CIVIL APPEAL 12 OF 2003

MURUGA MWATHA.....APPELLANT

VERSUS

NICHOLUS WAMBU MWANGI.....RESPONDENT

JUDGMENT ON APPEAL

This appeal arises out of an award of Central Province Land Disputes Appeals Committee in their **Case No.10 of 2002 filed in Kerugoya P.M's Land Disputes Tribunal Case No.18 of 2002 on 19/2/2003.**

The grounds are three in number: -

First of which is that the Appeals Committee erred when it refused to hear the appeal before it arising out of an award filed by Gichugu Division Land Disputes Tribunal.

Secondly that it erred in adopting the proceedings in **Embu PMCC No. 89 of 1980** which suit had been dismissed for want of jurisdiction.

Thirdly the committee erred in holding that the Appeal before it was res judicata.

A perusal of the record shows that Provincial Land Disputes Appeal Committee dismissed the appeal saying that it was res judicata having been arbitrated by a panel of elders agreed upon by the parties at Gichugu and the ruling made in the **Magistrate's Court at Embu Civil Case No. 89/80.**

On 21/12/2001 the Senior Principal Magistrate's Court at Embu decided to dismiss the suit for lack of jurisdiction on the ground that it was a claim of trespass. That suit was between Muruga Mwatha and Ndingo Ndambuki. The two parties began there was a hearing in Gichugu Division Land Disputes Tribunal in 2002. There was a complaint about boundary between Nicholus Wambu Mwangi and Mugo Mbura. This dispute was resolved by Land Registrar. The dispute therefore being a dispute on the issue of boundary and trespass was properly within the jurisdiction of the Land Disputes Tribunal at Gichugu Division. As part of evidence offered to Gichugu Tribunal a report of Land Registrar was received by the Tribunal. The issue of determination is also provided for under the provisions of Registered Land Act Cap 300 laws of Kenya. The arbitration award was made that the surveyor do revisit to measure 4.97 acres as original measurements. This award was forwarded to **Principal Magistrate Court at Kerugoya on 15/4/2002.** That award was read as between appellant and Respondent in this appeal. The appeal to Appeals Committee was between Muruga Mwatha and Nicholus Wambu Mwangi when the Appeals Committee found that matter was res judicata and therefore the appeal was not heard.

As I have stated above the dispute was within the jurisdiction of the Provincial Disputes Appeal Committee. The right of Appeal is granted under Land Disputes Tribunal Act 18/90. The Appeals Committee misdirected itself in making a finding of Res judicata. The parties had not exhausted the available procedure. The finding made by Committee was not with any basis. The appeal is allowed with costs to Respondent.

It is so ordered.

Dated this 14th December, 2007.

J. N. KHAMINWA

JUDGE

14/12/2007

Khaminwa – Judge

Njue – Clerk

M/s Thungu HB for Wairimu

Mr. Mutahi HB

Read in open court.

J. N. KHAMINWA

JUDGE