



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Misc Civ Appli 70 of 2003**

**REPUBLIC .....**

**APPLICANT**

**VERSUS**

**RIFT VALLEY PROVINCE LAND DISPUTES APPEALS COMMITTEE .....**

**RESPONDENT**

**AND**

**WILLIAM KIPSOI SIGEI & 7 OTHERS ..... INTERESTED**

**PARTIES**

**EX PARTE**

**JOHN KIPTOO ARUSEI AND 625 OTHERS**

**R U L I N G**

The applicants seek an order of certiorari to remove into this court and quash the decision of the Rift Valley Province Land Disputes Appeals Committee (the Appeals Committee') dated 18/10/2002. They however pray that the costs of the application be in the cause.

They rely on various grounds but mainly there were no prior proceedings which would have given rise to an appeal to the Appeals Committee, and that the said Committee deliberated and arrived at a decision in the matter, before the matter was considered by the Land Disputes Tribunal. It is therefore their stand that the Appeals Committee exceeded its powers and conferred upon itself original jurisdiction to entertain an original dispute.

The application is however opposed on technicalities the main one being that it is fatally defective and incompetence.

I have taken the submissions of all counsel into account and it is my humble opinion that the issue of jurisdiction is paramount. It is important that one looks at the relevant sections of the Land Disputes Tribunal Act No. 18 of 1990 ('the Act'), to understand the levels of jurisdiction.

Indeed section 8 (1) thereof provides that “any party to a dispute under section 3 who is aggrieved by the decision of the Tribunal may, within thirty days of the decision, appeal to the Appeals Committee constituted for the Province in which the land which is the subject matter of the dispute is situated”, which in effect means that one would have to establish what would be the powers of the Tribunal and in which case the relevant section of the Act will be 3 which stipulates that:

“(1) 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.

(2) Every dispute referred to in subsection (1) shall be instituted by presenting a claim to the Tribunal for the area in which the land is situated, and shall contain, and contain only, a summary of the material facts on which the claimant intends to rely.

(3).....

(4).....

(5).....

(6).....

(7) The Tribunal shall adjudicate upon the claim and reach a decision in accordance with recognized customary law, after hearing the parties to the dispute, any witness or witnesses whom they wish to call and their submissions, if any, and each party shall be afforded an opportunity to question the other party’s witness or witnesses.

(8) The Tribunal shall give reasons for its decision, which shall contain a summary of the issues and the determination thereof, and which shall be dated and signed by each member of the Tribunal.”

Though Appeals can only lie from decisions of the Tribunal, it is however common ground that there was no reference to the Land Disputes Tribunal at the first instance, as envisaged by the aforementioned section 3. It is therefore difficult for one to understand how the Appeals Committee could hear and determine such a matter for its jurisdiction is well founded in section 8 of the Act.

In my humble opinion, and based on the powers conferred by virtue of the above legal provisions, the Appeals Tribunal does not and cannot exercise original jurisdiction. The Appeals Tribunal therefore lacked the relevant jurisdiction to deal with the matter and its decision was null and void ab initio.

The issues raised by the applicant pertaining to the jurisdiction of the respondent cannot just be wished away. To do so would be to cause great injustice to the 626 applicants. It is trite that issues of jurisdiction go to the root of any cause and in my humble opinion, it can not be gainsaid that this court can deal with issues of jurisdiction suo moto, especially in view of the fact that all decisions by a court, a Tribunal or any other body, which lacks jurisdiction, are null and void ab initio.

In view of the above, and in the interests of justice, I am inclined to and I hereby grant an order of certiorari to remove into this court and quash the decision of 18/10/2002 by the Rift Valley Province Land Disputes Appeals Committee.

Each party shall bear its own costs of this application.

Dated and delivered at Eldoret this 7<sup>th</sup> day of July 2006.

JEANNE GACHECHE

Judge

Delivered in the presence of:

Mr. Ngala for the applicants

Mr. Momanyi for the interested parties

No appearance for the respondents