



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**Civil Appeal 62 of 2003**

**JOSEPH WANYOIKE NJOROGE ..... APPELLANT**

**VERSUS**

**WAMBORI NJOROGE ..... 1<sup>ST</sup> RESPONDENT**

**JOHN MAINA MBUTHIA ..... 2<sup>ND</sup> RESPONDENT**

**(Being an appeal from the decision of the Rift Valley Provincial Lands Appeals Committee**

**delivered on 27/3/2003 and adopted on the 7/5/2003 by the Chief**

**Magistrate's Court Eldoret as Award No. 14 of 2001)**

**JUDGMENT**

Wamburi Njoroge, Joseph Wanyoike Njoroge and Maina Njoroge are brothers, of who Wamburi is the eldest. The family originally lived in Kandara Murang'a, where though their family land had been disposed of by their father, Wamburi had however managed to re-purchase it, and it was later registered in their mother's name as Wamburi was in detention at the material time, he however sold it soon after his release, and used the proceeds to acquire, a 7 acres plot in Subukia, namely Plot 54 B within the Subukia Society (hereinafter called 'the subject property'). His efforts to have it registered in his sole name were however thwarted by his brothers who would not hear of it. The matter was then referred to the local elders who decided that Wamburi be allocated with 3 acres, while his two brothers be allocated with 2 acres each, which mode of allocation was acceptable to both Wambari and Maina.

Wanyoike was however not satisfied with that decision, and he referred the matter to the Land Disputes Tribunal at Kesses, in the year 2000. After both parties were heard, the Tribunal which concluded that it was Wamburi who had re-purchased the land in Kandara, after which he had bought the subject property, decided that Wamburi should be allocated with an extra acre, and that the 7 acres plot be apportioned amongst thee three brothers, with Wamburi being allocated with a 3 acres portion, while the other two, be allocated with 2 acres each, which was in line with the decision of the panel of elders.

Wanyoike who was still not satisfied with that decision of the Tribunal, lodged his appeal to the Rift Valley Provincial Land Disputes Appeals Committee, which I shall hereinafter refer to as the 'Appeal Committee', in which appeal the Tribunal was named as the 1<sup>st</sup> respondent, while Wamburi was the 2<sup>nd</sup> respondent.

His major complaint was that Wamburi should not have been awarded the extra acre as not only had the subject land had been acquired with proceeds from the sale of their family land in Kandara, but that they had all contributed towards the acquisition of the former, and for the first time, he challenged the acreage of the parcels in question, as it was contention that it totaled 8 acres, which included an acre plot at Katira as well as a township plot.

After taking evidence and deliberating on the issues that arose from that appeal, the Appeals Committee, decided that the subject property be subdivided amongst the three with Wamburi being allocated with two and a half acres, while Wanyoike and Maina would be allocated with 2 acres each, a decision which aggrieved Wanyoike, who has now preferred this appeal, for it is his contention that the Appeals Committee fell into error of law, firstly when it failed to consider all evidence before it, and by secondly contravening the provisions of Sections 8 (7) and (8) of the Land Disputes Tribunal Act No. 18 of 1990 (hereinafter referred to 'the Act'). He therefore feels that there was no valid decision as would be envisaged by law.

Section 8 (7) and (8) of the Act which he pleads stipulates that:

*“(7). After giving each party an opportunity to state his case the Appeals Committee shall determine the appeal giving reasons for its decision:*

*Provided that the committee may in its discretion permit the party appealing to reply to the other party's submission if that submission contains any new matter not previously introduced at the hearing or on the appeal.*

*(8) The decision of the Appeals Committee shall be final on any issue of fact and no appeal shall lie therefrom to any court.*

It is on record that Maina has never challenged any of the awards. It is also clear that this appellant has never taken issue with the allocations made to Maina on various occasions, neither did this appellant make any reference to Maina's allocation at the Appeals Committee level, which would mean that he has no quarrel with that particular aspect of the decision, and no valid grounds have been advanced against Maina in this appeal. He therefore opposes the appeal against him, and rightly so. I do therefore find that the appeal against him is not warranted and I do dismiss it with costs.

Coming back to the appeal against Wamburi who I shall now refer to as the respondent, the issue for my determination would be whether the Appeals Committee failed in its task as an Appeals body, as the appellant would urge this court to find, and also whether this appeal is meritorious.

I have taken the submissions of both counsel into account, and after evaluating of the proceedings before both the Tribunals, it would appear that the bone of contention before the Appeals Committee was the total acreage of the land which should have been divided amongst the three, secondly the proportions that should have been applied by the Appeals Committee.

It is imperative that I point out at this stage that though Wanyoike, who I shall now refer to as 'the appellant' had only raised the issue of the allocation of only the seven acres, when he appeared before the Tribunal at Kesses, he could raise a new issue on at the first appeal stage as is well catered for in the proviso to the aforementioned section 8 (7).

Be that as it may, it is on record that the Appeals Committee found that the subject land had been acquired by the family. It also found that Wamburi had disposed of the aforementioned 1 acre as well as township plot, and further that the family had deliberated on the matter of subdivision had been discussed by members of the family who had decided that the subject property be divided fairly, after which the Appeals Committee delivered it aforementioned verdict. I find that the Appeals Committee took into account evidence regarding the re-purchase of the land in Kandara, the relocation of the family to the Rift

Valley, the acquisition of the subject property and the disposal of the two plots, which would in my mind mean that it considered all the issues which formed the grounds of his appeal before it, including the three parcels of land in question. I also find that the evidence was considered exhaustively, after which it gave its decision and the reasons thereof. In any event, it is my humble opinion, that the issue of acreages is a matter of fact, which can not be raised at this point as it is clear from the above provisions of the law that no appeal to this court shall lie on matters of fact.

Based on the above findings, I am convinced that this appeal lacks in merit, and the appellant fails on all limbs of his appeal.

He shall bear the costs of this appeal.

Dated and delivered at Eldoret this 16<sup>th</sup> day of March 2005.

JEANNE GACHECHE

JUDGE

Delivered in the presence of: