

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
Civil Appeal 90 of 2002

JAMES MWANGI KIARAGANA APPELLANT
VERSUS
REBECCA NJERI RESPONDENT

R U L I N G

The advocate for the Respondent has raised a preliminary objection to the hearing of this appeal contending that the court does not have jurisdiction to entertain the appeal basically on two main grounds.

First, that the land Disputes Tribunal being a quasi judicial body and its decision having been confirmed by the court, the only available avenue is to move the court to quash such decision by way of order of judicial review, and secondly, the appellant having submitted himself to the jurisdiction of the Tribunal he cannot now turn that jurisdiction on appeal.

Counsel relied on a judgment of Hon. Khamoni J in **Nyeri H.C.C. Appeal No. 58 of 2002, John Kibe Thuo v/s Daniel Ndungu Muchuna.**

Mr. Kariuki who appeared for the Appellant submitted that the issue of jurisdiction was one of law and the appeal having been certified as raising issues of Law, it was properly before the court. He further contended that apart from jurisdiction there were other issues of law which ought to be dealt with in the appeal.

In my view the issues raised though weighty are not issues which ought to be dealt with as preliminary issues but ought to be canvassed at the hearing of the main appeal.

This is because there are certain factual basis which must be established from the record of appeal. For instance whether the Appellant raised any issue with regard to the jurisdiction of the Tribunal either at the Tribunal or before the Appeals committee.

Another issue is whether the court has adopted the judgment of the tribunal and whether this was done after the appeal had been lodged or before.

In the authority referred to, both issues now being raised by the advocate for the Respondent arose.

However the same were not dealt with as preliminary issues. The issue of jurisdiction was determined within the appeal whilst questions relating to the second issue were raised as food for thought without any specific conclusion.

I would overrule the preliminary objection and order that the appeal do proceed to hearing but that the advocate for the Respondent will be at liberty to argue the issues raised within the appeal. Those shall be the orders of this court.

Dated signed and delivered this 22nd day of July 2005.

H. M.OKWENGU

JUDGE