



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**H.CIVIL APPEAL NO.268 OF 1999**

**1 ERASTUS J.M. MWANGI**

**2. STEPHEN KIRATHE ..... PLAINTIFFS**

**VERSUS**

**JACOB GAKURU STEPHANO .....DEFENDANT**

**FURTHER JUDGMENT**

In my preliminary Judgment I ordered that a copy of the title deed be produced annexed to an affidavit sworn by the Respondent together with a certificate of confirmation of grant and an extract from the green card.

From the certificate of confirmation of Grant it appears that the Respondent was the beneficiary of the suit premises, the title to which is registered in his name. This is also confirmed by the entries on the green card although there is a caution registered by the first appellant claiming a beneficial interest in the suit premises.

The Appellants who are the sons of the Respondent are concerned that their father wishes to give the suit premises to his wives and that in particular he is being manipulated by his last remaining wife.

The Appellants complain that the Provincial Land Tribunal heard an appeal against the decision of the Maragua District Land Dispute Tribunal in case No. LDT 26 of 1998 Maragua, which was out of time.

I find it difficult to see why proceedings were brought before the District Land Dispute Tribunal ostensibly by the Respondent. There are no pleadings either in the original file or the Record of Appeal.

The Respondent in the Appeal states in the record that he had made the appeal because the Maragua Tribunal ordered him to give the land to his sons.

The Award at page 9 of the Land dispute Tribunal is not clear as to how the land is to be sub-divided. However what is clear is that the Tribunal was acting in excess of its jurisdiction in ordering the sub-division of a piece of land to which there is a title under the Registered Land Act. Their decision is therefore ultra virus their powers and therefore unlawful.

The point at issue in this matter is the question as to whether or not the Appellants have any right in law, whether customary common law or statutory to claim part of their father's land in his lifetime.

The Appellants rely on the Kikuyu custom called Kagonda ka Mai.

This is the right in a beneficiary. However this right can only be asserted in a Succession Cause. If the Appellants consider they have a right to land devolved through their grandmother they should make an application in a Succession Cause.

I see no evidence that the Appeal to the Provincial Appeal committee was out of time.

However this is academic as the orders it made are beyond its jurisdiction even by consent. In the result I dismiss this appeal. As the Appellant is in person and the Respondent their father I make no order as to costs.

Dated and delivered at Nairobi this 17th day of February 2004

**P.J. RANSLEY**

**JUDGE**