



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CIVIL APPEAL NO. 498 OF 2002

PETER MUIRURI KAMAUAPPELLANT

VERSUS

LEE MBURU BORO RESPONDENT

JUDGMENT

The Appellant appeals against the decision of the Province Land Disputes Appeal Committee Kiambu 8/2002 of the 6/7/2002

The Committee in its award stated as follows:

“ Since Muiruri is the legal owner of the suit land and that he is alive and normal, his wishes must be respected.

1. Lee Mburu should vacate from Muiruri’s land on condition that all the development Mburu had done in the land in dispute is compensated
- . 2. A competent valuer be hired to assess the development to establish how much money Muiruri should pay for the development plus the interest at per bank rates.”

Section 3 of the land Disputes Tribunal Act (the Act) gives jurisdiction to the Tribunal to hear and determine disputes as to inter alia © trespass to land

. No provision is contained in the Act as to what orders the Tribunal make rule. Section 3(7) and (8) states as follows:-

(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

. Section 7 (1) and (2) of the Act states as follows:

(1) The Chairman of the Tribunal shall cause the decision of the Tribunal to be filed in the Magistrate's Court together with any depositions or documents, which have been taken or proved before Tribunal.

(2) The Court shall enter Judgment in accordance with the decision of the Tribunal and upon Judgment being entered a decree shall issue and shall be enforceable in the manner provided for under the Civil Procedure Act.

In my view the Tribunal rule made an order that a person has trespassed on to land but it has no power to order eviction or award compensation arising out of such findings. The proper forum for an order for eviction is the courts of law. However where the Tribunal has found that there has been an act of trespass this should be sufficient evidence to enable a court of law to make the appropriate orders.

In the result I hold that the award of the Committee made on the 16/7/2002 is ultra **virus its powers**.

Each party will pay its own costs in this appeal.

Dated and delivered at Nairobi this 23rd day of October 2003

P.J. RANSLEY

JUDGE