



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**JUDICIAL REVIEW E.L.C. NO 14 OF 2014**  
**FORMERLY KERUGOYA J.R. 16 OF 2014**

REPUBLIC.....APPLICANT

*VERSUS*

CHAIRMAN EASTERN PROVINCIAL

APPEALS TRIBUNAL.....1<sup>st</sup> RESPONDENT

PRINCIPAL MAGISTRATE'S COURT

SIKAKAGO.....2<sup>nd</sup> RESPONDENT

MUIINDI MWARE IKONYE.....3<sup>rd</sup> RESPONDENT

RURIGO NDERI.....4<sup>th</sup> RESPONDENT

CHAIRMAN MBEERE LAND DISPUTES

TRIBUNAL.....5<sup>th</sup> RESPONDENT

**RULING**

**Introduction:**

Mr Njagi Muratho, the ex-parte applicant has appealed against the decision of the Eastern Province Tribunal dated 25<sup>th</sup> March, 2009. the Provincial Appeals Committee confirmed the findings of the Mbeere District Land Disputes Tribunal which ordered the Land Registrar to transfer land parcel number Evurore/Nguthi/762 to be registered in the name of Rurigio Nderi. Mr Rurigio Nderi the 4<sup>th</sup> respondent has opposed and has urged the court to uphold the findings of the Provincial Appeals Committee.

**The Decision Appealed Against:**

The decision appealed against consists of the findings of the ruling of the Provincial Appeals Committee which is in the following terms:

**Findings:**

***“This panel has noted that the appellant have failed to attend the case for more than 4 times as noted in the file. Hence the respondent who is Rurigio Nderi has never failed. We found that he is the winner of the case at Mbeere District Tribunal”.***

**Ruling:**

***“Appeals dismissed. The Provincial Committee has concurred with Mbeere District Tribunal. The Provincial Committee ordered the land registrar to transfer land number Evurore/Nguthi/762 registered under Njagi Murotho to read Rurigio Nderi”.***

The ex-parte applicant filed a notice of motion dated 7<sup>th</sup> July, 2012 together with a statement of facts and a verifying affidavit. According to the verifying affidavit of Mr Njagi Muratho and statement of facts, he states that he is the registered owner of land parcel No. Evurore/Nguthi/762 to which he annexed the green card (certificate of title) and a search certificate. He further states in his verifying affidavit that Rurigio Nderi, 4<sup>th</sup> respondent filed a case against him in the Mbeere Land Disputes Tribunal which found in favour of Rurigio Nderi.

As a result, the award was made in favour of Rurigio Nderi. This award was adopted as an order of the court in the Principal Magistrate's court at Siakago in tat courts Land Disputes Tribunal case number 3 of 2013 between Rurigio Nderi v. Muindi Mware Ikonye 3<sup>rd</sup> respondent and Njagi Murato (2<sup>nd</sup> defendant). The adopting judgement is dated 12<sup>th</sup> November, 2009.

Following an application dated 12<sup>th</sup> January, 2010, the court authorized its executive officer to sign the necessary transfer documents. And in the meantime, a stay of execution was ordered to be in place.

**The Submission of Njagi Muratho (Ex-parte Applicant)**

In his submissions dated 13<sup>th</sup> March, 2013, Mr Njagi Muratho has submitted that both tribunals did not have the jurisdiction to entertain the claim because it concerns the Registrar of Land over which they had no jurisdiction. According to his counsel, the Land Disputes Tribunal Act 18 of 1990 did not give power to the Tribunal to entertain issues that are in relation to the ownership of the land. And for that reason, the ex-parte applicant applies to this court to set aside the order of the Appeals Committee.

**The Case for the 4<sup>th</sup> Respondent Mr Rurigio Nderi:**

The 4<sup>th</sup> respondent filed a replying affidavit in which he supported the decision of the Appeals Committee. According to him the ex-parte/applicant slept on his rights. He further stated in his affidavit that the 4<sup>th</sup> respondent was the first registered owner of the suit land. Finally, he says that the order adopted the award was lawful and that the application of the exparte/applicant is an abuse of the court process.

**The Applicable Law:**

The law that governs this case is found in Order 53 Judicial Review. It is further governed by the provisions of ***Section 3 of the Land Disputes Tribunal Act Number 18 of 1990***. According to the provisions of the Land Disputes Tribunal Act (now repealed), the jurisdiction of the Land Disputes Tribunal is as follows:

***3. (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.***

The provisions of that Act have been interpreted and judiciary approved in a number of cases among them the case of ***Court of Appeal in Asman Maloba Wepukhulu & anor v. Francis Wakwabubi Biketi Civil Appeal No. 157 of 2001, (Kisumu)***. It is clear that the Mbeere District Land Disputes Tribunal and the Eastern Province Appeals Committee did not have the jurisdiction to entertain the disputes relating to title to land. Their jurisdiction is explicitly limited to claims that relate to trespass, occupation and subdivision of land in terms of ***Section 3 of the Land Disputes Tribunal Act***.

It therefore follows that the decision of the Provincial Appeals Committee does not have the support of the law. It is therefore null and void.

The order of the court directing the Land Registrar to register the land in the name of the 4<sup>th</sup> respondent is also null and void because it is based on the finding of the tribunal which had acted in excess of its jurisdiction.

### **Issues for Determination:**

In view of the foregoing findings of the tribunal, submissions of both counsel and the applicable law, the following are the issues for determination:

1. Whether or not the Eastern Province Appeals Committee and the Mbeere District Land Disputes Tribunal had jurisdiction to award the land to the 4<sup>th</sup> respondent.
2. Who should pay for the costs of this application.

### **Evaluation of the Evidence, Findings and the Law**

In the light of the findings of both tribunals and the applicable law, I find that both tribunals lacked the jurisdiction to award the suit land to the 4<sup>th</sup> respondent (Mr Rurigio Nderi). The reason is that the statute that created them did not give them the authority to deal with issues affecting title to land. The court of appeal judgement in ***Asman Maloba Wepukhulu & anor v. Francis Wakwabubi Biketi Civil Appeal No.157 of 2001, (Kisumu)***.is binding on this court.

According to that court, the Land Disputes Tribunals have no jurisdiction to deal with issues relating to title to land. It therefore follows that both tribunals lacked jurisdiction to make an award in favour of Mr Rurigio Nderi. For this reason, the Magisterial Judgement which adopted the award in favour of Mr Rurigio Nderi can also not stand in law and therefore the order directing the Registrar of Lands is also null and void.

### **Verdict and Disposal Order:**

In the light of the foregoing, I hereby make the following orders:

1. The award of the Appeals Committee is hereby set aside.
2. The magisterial order adopting the award is also set aside.
3. The order directing the land registrar to register Mr Rurigio Nderi as the registered owner is also set aside.
4. Costs and interests thereon are hereby awarded to Mr Njagi Muratho (ex-parte applicant)

**RULING DATED, SIGNED and DELIVERED** in open court at **EMBU** this.. **9<sup>th</sup>** day of **FEBRUARY,..2015**

In the presence of .....

Court clerk Mr. ....

Right of appeal under Order 43 Civil Procedure Rules of 2010 explained to the parties.

**J.M. BWONWONGA**

**JUDGE**