



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL APPEAL NO. 131 OF 2002

MATHEKA NGUI APPELLANT

VERSUS

KITONYI MBITHI RESPONDENT

*(Being an appeal from the ruling of the Principal Magistrate's Court at Kitui of Hon E.K. Makori
S.R.M in Senior Resident Magistrate Case No. 54 of 2002 dated 1st November 2002)*

(Before B. Thurania Jaden J)

J U D G M E N T

1. On 2/4/2002, the **Land Disputes Tribunal, Ikutha Division** heard a land dispute in **Case No. 4/2002** between the Appellant, **Matheka Ngui** and the Respondent, **Kitonyi Mbithi**. The award of the Tribunal was thereafter filed at the **Principal Magistrate's Court, Kitui**.
2. On 9/8/2002, an application was filed by the Respondent seeking to "defer" the reading of the award filed by the Land Disputes Tribunal. In a ruling read on 1/11/2002, the lower court termed the Tribunal's award as abuse of the court process and rejected the ruling and sent back the same to the Tribunal. That is what triggered this appeal.
3. The appeal is predicated on the following grounds:-
 1. **The learned Principal Magistrate erred and misdirected himself in law and fact when he declined to read to the parties the decision of the Land Disputes Tribunals Act, Act No. 18 of 1990.**
 2. **The learned Principal Magistrate erred and misdirected himself when he failed to find that the appellant was not a party in PMS CIVIL CASE NO. L 19 of 2001 between Mwalimu Syala -vs- Kitonyi Mbithi and consequently the Appellant was not bound by whatever orders that may have been made in the case.**
 3. **The learned Principal Magistrate erred and misdirected himself in law when he failed to find that he had no supervisory jurisdiction over the Land Disputes Tribunals.**
4. The appeal was canvassed by way of written submissions which I have duly considered.
5. The jurisdiction of the Magistrate's Court is set out under **section 7** of the **Land Disputes Tribunal Act** which stipulates as follows:-

"7 (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 the Tribunal.

7 (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.”

6. The **Land Disputes Tribunal Act** provides for a machinery for redress if the decision is wrong or illegal. The Magistrate’s court has no supervisory role over the **Land Disputes Tribunal**. The magistrate therefore had no jurisdiction to question the Tribunal’s award. Consequently, the orders made by the Magistrate’s Court are null and void and are hereby set aside. The appeal has merits and is allowed. Due to the circumstances of this case, each party to meet own costs.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 15th day of May 2014.

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B. THURANIRA JADEN

JUDGE